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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
-----x

CORY EPPS,

Plaintiff,

v.

1:19-cv-00281-LJV

THE CITY OF BUFFALO, DETECTIVE  
JOHN BOHAN, DETECTIVE  
REGINALD MINOR, DETECTIVE  
MARK STAMBACH, DETECTIVE  
JAMES GIARDINA, DETECTIVE  
ANTHONY CONSTANTINO,  
DETECTIVE ROBERT CHELLA,  
RANIERO MASSECHIA, CHARLES  
ARONICA AND CHIEF JOSEPH RIGA,

Defendants.

-----x  
January 21, 2021  
10:45 a.m.

Videoconference deposition of JAMES F.  
GIARDINA, taken by the plaintiff, pursuant  
to notice, reported remotely by Jennie  
Siolidis, a Shorthand Reporter and Notary  
Public of the State of New York.

APPEARANCES:

RICKNER, PLLC

Attorney for plaintiff

14 Wall Street

Suite 1603

New York, NY 10005

BY: ROB RICKNER

CITY OF BUFFALO LAW DEPARTMENT

CORPORATION COUNSEL'S OFFICE

Attorney for defendant

65 Niagara Square

Room 1112

New York, NY 14292

BY: MAEVE HUGGINS

PRESENT:

STEPHANIE PANOUSIERIS

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED,  
by and between counsel for the respective  
parties hereto, that all objections, except  
as to form, are reserved to the time of  
trial.

IT IS FURTHER STIPULATED AND AGREED  
that the deposition may be signed and sworn  
to before any officer authorized to  
administer an oath.

IT IS FURTHER STIPULATED AND AGREED  
that the sealing and filing of the  
deposition be waived.

Giardina

4

JAMES F. GIARDINA,

called as a witness, having been duly  
sworn, testified as follows:

EXAMINATION

BY MR. RICKNER:

Q. State your name for the record.

A. James F. Giardina,  
G-i-a-r-d-i-n-a.

Q. What is your address?

A. 341 Willow Green Drive, Amherst,  
New York 14228.

Q. Okay. Good morning, Detective.

A. Hello, sir.

Q. When you retired from the Buffalo  
Police Department, were you a detective?

A. Yes.

Q. Okay. So I'll call you  
detective. Have you ever had your  
deposition taken before?

A. Yes.

Q. How many times?

A. I don't -- a couple times at  
least.

Q. Were any of those depositions

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Giardina

5

with respect to your work as a police officer?

A. Yes.

Q. Were any of those depositions civil rights cases?

A. No.

Q. Were any of those depositions cases where somebody alleged excessive force?

A. No.

Q. Were any of those depositions cases where somebody alleged that you had said something dishonest?

A. No.

Q. Now, you may remember from these prior depositions or from your prep, but there are a few ground rules just to make sure that the deposition goes smoothly.

First, I ask rambling questions and you may know exactly where I'm going even though I keep talking and talking and talking; and even though you know what I'm going to ultimately ask, please wait until I'm finished before jumping in with an

Giardina

6

answer. Can you do that?

A. Sure.

Q. Also, I need verbal responses; you have to say yes or no. If you say uh-huh or if you nod your head, it can't be taken down clearly by the court reporter and we don't get a good transcript. Can you do that for me?

A. Yes, sir.

Q. And now, you're testifying over Zoom you know, in an office building, but the rules are the same as though you were in court; meaning, you have to tell the truth, the whole truth, and nothing but the truth. Will you do that for me?

A. Yes, sir.

Q. Great. Now, when did you graduate high school?

A. 1970.

Q. Okay. When did you join the Buffalo Police Department?

A. 1971.

Q. Between 1970 and 1971, did you hold any different positions in law

Giardina

7

enforcement?

A. No.

Q. When did you retire from the Buffalo Police Department?

A. 2006.

Q. Since 2006 have you held any positions in law enforcement?

A. No, sir.

Q. When you started at the Buffalo Police Department in 1971, did you go to some sort of academy or basic training?

A. Yes.

Q. And how long was that?

A. Approximately six months.

Q. During that six-month training in 1971, did you receive any instruction regarding how to do a lineup, meaning an in-person lineup?

A. Not really instructions, just kind of walked us through a lineup and just showed us how it was actually done.

Q. Okay. During that training period, was there anything that you were told to do specifically with regard to an

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8

in-person lineup?

A. Not that I could recall.

Q. Was there anything you were told not to do?

A. No, not that I could recall.

Q. Okay. During that six-month training period in 1971, did you receive any instruction on how to do a photographic lineup where you place photographs with similar people onto a sheet and show it to a witness?

A. No.

MS. HUGGINS: Form.

Q. Do you know what Brady is with respect to law enforcement?

A. Yes, if I recall. Yes.

Q. What is your understanding of Brady?

A. To present evidence to -- regarding evidence. Or I don't know. I'm not too clear on that.

Q. This isn't a pop quiz. I just want to know what you know.

A. I've been out of this for



Giardina

9

16 years and I kind of --

Q. Why would you still care? I understand.

A. Yeah.

Q. But going back in 1971 when you were doing the six months training, was there an understanding that you had to turn over exculpatory evidence to the prosecution, meaning evidence that might tend to show that the criminal defendant was innocent?

A. Yeah.

Q. Were you trained with regard to that during those six months?

A. Yeah, I believe so.

Q. Okay. Now, after your training period, did you have a particular position at the Buffalo Police Department that you assumed?

A. I was a patrol officer.

Q. How long were you a patrol officer?

A. Approximately ten years.

Q. So until about 1981?

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A. Yes.

Q. Now, in the period from 1971 to 1981 while you were a patrol officer, did you personally conduct any lineups?

A. No.

Q. Did you do any photographic identifications?

A. No.

Q. After 1981 did you assume another position?

A. Yes.

Q. What was that?

A. The narcotics squad.

Q. Did you have a particular title at the narcotics squad?

A. I eventually became a detective.

Q. Okay. But in 1981 when you first joined the narcotics squad, did you have a new title?

A. Just still police officer.

Q. Okay. And while you were at the narcotics squad, you became a detective?

A. Yes.

Q. When was that?

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Giardina

11

A. I don't recall the exact --  
within a year or two.

Q. Okay. So 1982, 1983 thereabouts?

A. Right.

Q. When you became a detective at  
the narcotics squad, did you go back to the  
academy and get additional training?

A. No.

Q. Did you have to take any classes?

A. No.

Q. Did you receive any specific  
on-the-job training?

A. Mostly on the job, OJT,  
on-the-job training.

Q. Okay. Was any of the on-the-job  
training with respect to doing a lineup?

A. No.

Q. Was any of the on-the-job  
training with respect to doing a  
photographic lineup?

A. No.

Q. Was any of the on-the-job  
training involving turning over exculpatory  
evidence to the prosecution that may be

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uncovered during an prosecution?

MS. HUGGINS: You can answer.

A. Yes.

Q. And can you tell me what you learned during that on-the-job training with respect to exculpatory information?

A. To turn over any information, any statements or any evidence that was found or any statements that the defendants might have made.

Q. And did you ever have instances while you were a detective at any time where the District Attorney asked you to turn over exculpatory information?

A. Sure, yes.

Q. Now, how long were you part of the narcotics squad?

A. Approximately 15 years.

Q. So 1995 or 1996?

A. Yes.

Q. After you left the narcotics squad, where did you go?

A. Then I was a precinct detective.

Q. What's a precinct detective?

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Giardina 13

A. It investigates most, you know, crimes done in the precinct that weren't -- that didn't go to the homicide squad or narcotics squad or any of the specialty squads; usually larcenies or burglaries, stuff like that.

Q. And what precinct were you assigned to?

A. Precinct 17.

Q. Is that a particular neighborhood in Buffalo?

A. It's North Buffalo.

Q. And how long were you a precinct detective?

A. For one year.

Q. So maybe 1996 or 1997?

A. Right.

Q. And after you stopped being a precinct detective, what was your next position?

A. Then I was transferred to the homicide squad.

Q. And when you got to the homicide squad, did you get any additional classroom

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Giardina

14

or academy training?

A. When I first got there, there was a seminar, like a five-day seminar that all the detectives went through. I just happened to time it to be there at the beginning of that, the seminar, when they were holding that seminar.

Q. When they did that seminar, did anyone from outside the Police Department come in to teach?

A. Yes.

Q. Do you remember who that was?

A. No.

Q. Do you remember if they were part of some particular group like the FBI or the NYPD?

A. I believe what I can recall is they had I think it was a service, a company that handled these seminars, and they brought in people from all over, local FBI agents from different departments.

Q. Do you remember the name of the company?

A. No.

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Giardina 15

Q. Now, going back to, you know, the late 1990s at the Buffalo Police Department, how many people were part of the homicide squad?

A. Well, there are 12 -- how I remember it, there are 12 detectives, a lieutenant and then a chief.

Q. The lieutenant was Conwell?

A. Conwell, right.

Q. And the chief at that point was Riga?

A. Right.

Q. Now, were the 12 detectives broken up into particular shifts, for example, a day shift and a night shift?

A. Right. There were four groups of three and we all rotated.

Q. Four groups of three?

A. Right.

Q. Did each one of these four groups have a particular time that they were assigned to work or did it move around?

A. It rotated through the weeks.

Q. Not everyone was on night shift

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Giardina

16

continuously, for example?

A. Right.

Q. And your group of three in 1997 when you started, who was it?

A. Detective Mark Stambach and Detective Michael Lyons.

Q. Now, between when you started in 1997 or so and let's say the beginning of 2000, was your group of three continuously you, Stambach, and Lyons?

A. For the most part, yes.

Q. Okay. Were there any other officers that you worked with frequently during that time period?

A. I wouldn't say frequently but, you know, sometimes on particular occasions if we got called in, if, you know, either we needed help or they needed help, they would call us in or call them in for extra help. But as far as scheduling, it was basically just the three of us at a time.

Q. Now, the offices of the homicide squad at that point, was it just one big room where you all had desks, did you have



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Giardina

17

separate offices, or something else?

A. Right. The lieutenant had his separate office and the chief had his separate office.

Q. So the detective squad was an open plan where everyone's desks were around and then the lieutenant and the chief had their own offices?

A. Right.

Q. Was there a particular area where there were typewriters?

A. On every desk probably there was a typewriter.

Q. At that point, did you also have computers?

A. A couple.

Q. Would it be fair to say that at that time some people used the typewriters and some people used the computers?

A. Right.

Q. Besides everybody having their own desk, were there any bulletin boards up that had particular information during this time period?

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Giardina

18

A. Yeah. Yes.

Q. Was there a bulletin board that showed suspects that everyone was looking for in homicides?

A. No.

Q. Was there a place you could go to look to see, you know, for example, the identikits of potential suspects in a homicide?

MS. HUGGINS: Form.

A. There was the files, that's all. You know, we had file cabinets and each case had a file. And if you wanted information, you would just go pull the file and look through that.

Q. Would you talk to other officers about their homicide investigations outside of your circle of three?

A. Sometimes, yes.

Q. If there was a trial going on, would you generally be aware that one of the homicide cases was currently in court?

A. Sure.

Q. Now, besides this open plan area

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Giardina

19

and the two offices, was there also an  
interrogation room?

A. Yes.

Q. Was that right next to the  
detective squad or was it somewhere else in  
the building?

A. No. It was right next to the  
main office.

Q. Was there more than one  
interrogation room?

A. No. We only had one.

Q. If you had to interrogate more  
than one person at once, was there another  
room you could use?

A. There was an office across the  
hall that -- it was the -- I forget what --  
it was a different squad, but we would  
use -- they only worked days, so we would  
-- at night, we had access to their  
computers or typewriters or desks.

Q. Did the interrogation room that's  
closest to the homicide squad have a  
typewriter in it?

A. Yes.

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Giardina

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Q. Did it have a tape recorder?

A. No.

Q. Was there a tape recorder you could use if you wanted to tape record an interview?

A. I don't recall seeing one in the squad. There may have been, but we never used one.

Q. Okay. And did you have a video camera that was available if you wanted to videotape an interview or confession?

A. No.

Q. Now, you understand that there was someone murdered by the name of Tomika Means in 1997?

A. Yes.

Q. Did you ever work on that investigation?

A. No. Well, very little. I had nothing to do with the initial investigation. I just took a statement -- or not statement, took an interview or two that I can recall.

Q. Okay. About when did you do

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Giardina

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those interviews?

A. Within -- I don't know, within a couple days of the incident.

Q. And do you remember who you interviewed?

A. Only by referring to my -- the paperwork in the file.

Q. Okay. I'm trying to think. Most of the paperwork that I gave you should have a little number on the bottom right-hand corner. The document that you're talking about, can you identify the number in the bottom right-hand corner for me?

MS. HUGGINS: You mean the statement that reminded him of --

MR. RICKNER: What he did.

MS. HUGGINS: Yeah.

Do you understand his question?

A. Yeah. This shows just the Paul Pope case. Oh, wait, here.

Okay. I don't see anything on the -- well, there's two -- looks like two affidavits.

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Giardina

22

Q. Okay. Can you just give me the Bates number? And that's lawyer speak for the numbers in the bottom right-hand corner usually with respect though those documents.

A. It's 571.

MR. RICKNER: Maeve, could you just hold that up to the screen for me so I could see which one's being talked about? Got it.

All right. Can we mark Epps 00571 as Exhibit 14?

(Whereupon, Epps 00571 through 572 was marked as Exhibit 14 for identification as of this date by the Reporter.)

Q. And is Exhibit 14 an affidavit that you signed?

A. Yes.

Q. And reading this affidavit refreshed your recollection that you had done interviews in the Tomika Means murder investigation?

A. It says that here, but I don't

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Giardina

23

recall it at all.

Q. Okay. As you sit here today, besides the documents that you've reviewed, do you have any recollection of the Tomika Means investigation?

A. None whatsoever.

Q. Now, did you work with a Detective John Bohen, B-o-h-e-n?

A. He worked opposite of us, but he was in the same building -- or same office.

Q. What do you mean by he worked opposite us?

A. Well, he was -- like I said, there were four groups of three. He was a different group.

Q. So would he have been days while you were nights?

A. Right.

Q. Got it.

When was the last time you spoke with John Bohen?

A. I don't recall. It's been years and years since I've even seen him. I mean I ran into him one time at a store, just

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Giardina

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said hello and I asked how he was doing,  
and I think that had to be I'd say at least  
ten years ago.

Q. Now, do you remember who else was  
in John Bohlen's group of three?

A. I believe the breakdown, Bratos,  
B-r-a-t-o-s I think it's spelled, and I  
forgot who the third person was in that  
group.

Q. Do you know a detective by the  
name of Reginald Minor?

A. Yes.

Q. Now, did you ever work with  
Detective Minor on a case?

A. On any case?

Q. On any case.

A. Yes, I'm sure we did.

Q. Okay. When was the last time you  
spoke with Detective Minor?

A. I haven't spoken to him in, same  
thing, probably -- maybe -- same thing, I  
ran into him one time at an outing probably  
seven or eight years ago I would have to  
estimate.



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Giardina 25

Q. Now, we've established you know a Detective Mark Stambach, right?

A. Yes.

Q. When was the last time you spoke with Detective Stambach?

A. I believe I saw him approximately a year ago.

Q. And what did you discuss?

A. Just personal stuff, nothing work related.

Q. Did you talk about this case?

A. No.

Q. Have you ever discussed this case with Detective Stambach?

A. No.

MS. HUGGINS: Form. Meaning this lawsuit or --

MR. RICKNER: This lawsuit.

A. No, not at all.

Q. Do you know a Detective Anthony Constantino?

A. Yes.

Q. When was the last time you spoke to Detective Constantino?

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Giardina

26

A. Probably within the last ten years I might have seen him once or twice.

Q. Did you ever work on cases with Detective Constantino?

A. Yes.

Q. Do you know a detective named Robert Chella?

A. Yes.

Q. When was the last time you spoke with Detective Chella?

A. Two days ago.

Q. Really? What did you discuss?

MS. HUGGINS: It was a meeting with counsel.

Q. Okay. Besides meetings with counsel, have you spoken with Detective Chella in the last ten years?

A. On and off, probably see him once a year or so.

Q. Did you ever discuss this lawsuit with Detective Chella outside the presence of counsel?

A. No.

Q. Do you know a Detective Raniero

Giardina

27

Massechia?

A. Yes.

Q. And that's M-a-s-s-e-c-h-i-a?

A. I believe so.

Q. And when was the last time you spoke with Detective Massechia?

A. I don't think I've seen him in the last ten years.

Q. And do you know Detective Charles Aronica?

A. Yes.

Q. When was the last time you spoke with Detective Aronica?

A. Again, probably once in the last ten years.

Q. And what about Chief, and I suppose later, Captain Riga, or maybe Captain and then Chief Riga?

A. Well, he was captain -- his civil service rank was captain, but his title was chief of homicide.

Q. Got it.

And when was the last time you spoke with him?

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Giardina

28

A. I saw him this summer.

Q. Did you discuss this lawsuit?

A. No.

Q. When did you first become aware of this lawsuit? And I'm not talking about communications with counsel, just the date.

A. I believe it might have been a month or so ago I got a call saying that if I was going to be in the area around the middle of January.

Q. Okay. And prior to that, you weren't aware of this lawsuit?

A. No.

Q. Now, you said in the area. Do you still live in the general Buffalo area?

A. Yes, yes.

Q. Okay. Do you watch the local news?

A. Yes.

Q. Do you read any of the local papers?

A. Sure.

Q. Which ones?

A. Buffalo News.

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Giardina

29

Q. Do you recognize the name Cory Epps?

A. Yes, sounded familiar.

Q. Okay. Did you see any articles or other news when Cory Epps was released from custody?

A. No.

Q. At any time prior to this lawsuit, have you learned that Cory Epps had been exonerated?

A. No.

Q. Now, earlier we discussed that each case had a file; is that right?

A. Yes.

Q. Was there somebody in charge of keeping the files?

A. Well, we had a report technician who kept it in order and put new reports in and put them in the order they were supposed to be in and she basically kept up the file.

Q. Okay. Were there instances where you would put a report in a file without going to the report technician?

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A. No. It would always -- I'd have to say most -- well, as far as my experience, I never put anything in the file myself. I would give it to her, she would type it, I would sign it, give it back to her and she would enter it in the file.

Q. Okay. When you say give it to her, what do you mean?

A. I'd put it on her desk. There was a basket on her desk and you would place it in the basket, and then eventually it would end up in the file.

Q. Okay. When you would provide things to the report technician, would these be like handwritten notes?

A. It could be handwritten notes, sure. We would -- my procedure was I would take handwritten notes, you would call in to a machine your report -- you would write out a report, you would call it in, she would type it out, give you the report to check and then you would sign it. And then I would staple my handwritten copy of the

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Giardina

31

report and my handwritten notes to that report. That was my normal procedure.

Q. And then you would sign the report?

A. Yes.

Q. And what was the name of the report technician?

A. Her name was Marilyn Lanc L-a-n-c.

Q. At any time while you were at the homicide squad, was there ever a different report technician?

A. No. She was the only one that ever worked while I was there.

Q. Okay. Did you have a memo book?

A. Yes.

Q. Can you just describe what a memo book is?

A. Everybody used a different type of book. I used -- it was a small legal, like the legal -- the yellow legal pads, but the small mini ones I would use.

Q. Okay. So maybe four by eight inches, three by eight inches?

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32

A. Yeah, something like that.

Q. And when you were making notes in those notebooks if you had a particular homicide you were working on, would you keep one spot in the notebook for all of the notes relating to that homicide?

A. No. Like I said, I would tear them off after I wrote my report and staple those to my report.

Q. Got it.

And were there instances where you'd run out of pages in a memo book?

A. Sure.

Q. When that happened, were there some pages that hadn't been attached to a report?

A. Regarding that report?

Q. No, no, regarding anything.

A. No. I would just tear off the pages that regarded that report.

Q. Okay. But what I'm saying is so you have a memo book that you're using maybe every day, right?

A. Right.



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33

Q. Some of those pages gets torn out and put into a report, right?

A. Right.

Q. Do some pages remain in the memo book?

A. Sure.

Q. What happened when the memo book got full?

A. I would just, I don't know, put it in my desk and -- well, it was rarely full because, like I said, most of the time, I would tear them out and put them in the report. The other ones that, you know, maybe I had a memo to myself or I had to write down a phone number or something, they would stay in the pad itself and then I would -- my procedure, I would keep them in my desk and I just had a rubber band around them. Eventually I had a big stack of them. But some of them might have two or three pages, some might have had 20 pages.

Q. And that stack of memo books with the rubber band around it, was it still

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34

there when you left the precinct in 2006?

MS. HUGGINS: Form.

A. When I left the homicide -- when I retired? I believe I took them with me when I left.

Q. Okay. So just so the record's clear, you took your collection of memo books when you retired?

A. Yes.

Q. Do you still have them?

A. I don't believe so. I believe I shredded them.

Q. Have you looked for them recently?

A. No.

Q. When you were working at the Buffalo Police Department, did you ever hear about a place called Birchfield's?

A. Yes.

Q. What was Birchfield's?

A. It was a local bar on Main Street.

Q. And have you ever gone to Birchfield's?

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A. No, not -- well, I may have been in it on an investigation, but I've never gone in the place for personal purposes.

Q. Did Birchfield's have a particular reputation in the late '90s?

A. Yeah, seemed to be -- always seemed to be some problems. There was always -- not always, but seemed like there was shootings or fights and always different issues.

Q. And those shootings or fights were in or around Birchfield's?

A. Yes.

Q. Did you ever arrest anyone at Birchfield's?

A. No.

Q. Do you know if the Buffalo Police Department ever kept any sort of surveillance on Birchfield's because it was a problem area?

A. Not that I recall or not that I know of.

Q. Do you know what an identikit is?

A. Yes.

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36

Q. Is it correct to say that it's a way of getting a composite drawing of somebody?

A. Yes.

Q. Was that on the computer in the late '90s?

A. Well, back then it was a -- actually I never used it, but I know we had one. It was just a box and it had different categories in there, you know, as far as mouths, nose, shape of face, shape of eyes and they were all different types of, you know, of noses, different types of eyes, different types of mouths, different shapes of face, different hairstyles, but I actually never used one and never -- so I'm not too familiar with it.

Q. Was there a particular detective who was handling the identikits back then?

A. No. I don't remember even asking anybody to use -- to do it.

Q. During your work as a homicide detective, did you ever see the results of identikits, meaning the final face that was

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37

created?

A. No, not really.

Q. When was the first time that you learned of an individual named Cory Epps?

A. Like I said, I vaguely remember the name, but I don't know how I heard it or where I heard it.

Q. During your time as a narcotics detective, did the name Cory Epps ever come up?

A. No.

Q. You know prior to any involvement you had with Cory Epps' criminal case, had you ever heard of Cory Epps?

A. No.

Q. Did he have any reputation around the department?

A. Not that I know of.

Q. Do you recognize the name Russell Montgomery?

A. Just from going through the file.

Q. Were you aware that Russell Montgomery was convicted of murder as a result of your investigation?

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Giardina 38

A. Just -- like I said, just my only recollection is when I went through the file the other day and the name came up.

Q. How many homicides were there roughly in Buffalo in 1997?

A. Maybe 7- -- I believe probably in the 70s or 80s.

Q. And what about 1998?

A. In the ten years I was there, it varied from -- you know, I can't -- I don't remember the exact numbers, but it always varied from a low of high 50s to the high -- I think the highest year we had like 97, 97 homicides in one year, but I don't recall the exact years that those -- you know, when those numbers were. I know in the ten years I was there, that was the range.

Q. In the ten years you were there, given that there were four different squads, would it be correct to say that you worked on approximately a quarter of the homicides each year?

A. Yes, yes.

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39

Q. Did they track clearance rates?  
And do you know what that means by the way?

A. Yes, yes, yes.

MS. HUGGINS: Form.

Q. Okay. What does the term  
clearance rate mean?

A. The percentage of cases that are  
cleared by an arrest.

Q. Okay. And do you know what the  
clearance rate for homicides was in the  
'90s at the Buffalo homicide squad?

A. I know we were -- I thought we  
were fairly high, you know. Like compared  
to the national average, I think we were  
relatively above the, you know, the average  
in the country. I think it was like in the  
60 percent if I remember right.

Q. Sure. I'm only asking for what  
you remember.

A. Yeah.

Q. Do you recognize the name Wymiko  
Anderson?

A. Just from reading it in one of  
the reports the other, you know -- two days

Giardina

40

ago and today.

Q. Prior to looking at those documents, did you have any independent recollection of Wymiko Anderson?

A. None whatsoever.

Q. Do you recognize the name Jacqueline Bradley?

A. No.

Q. Do you remember a place called the Perkins Family Restaurant?

A. Yes.

Q. What was the Perkins Family Restaurant?

A. It was a chain restaurant specializing I guess in breakfast, but it was in North Buffalo.

Q. And was the Perkins Family Restaurant in your old precinct when you were a precinct detective?

A. Yes, it was actually.

Q. Do you know what times the Perkins Family Restaurant was open in the late '90s?

A. If I remember right, I think it



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Giardina

41

was open 24 hours.

Q. Was it a popular place for police officers to hang out?

A. I don't know if it was -- well, probably because the 24-hour -- because it was open 24 hours and, you know, it was a place to go in the middle of the night if you wanted coffee or breakfast.

Q. Now, when you started an investigation into a homicide, was there a particular procedure by which you were assigned a case?

A. Well, you were assigned if it happened during your shift.

Q. So meaning that if there was a homicide during your shift, just by default you would go investigate it?

A. Right.

Q. What if additional assistance was needed on a homicide, who would assign you to work on, let's say, somebody else's case?

A. Well, the chief would or the lieutenant would ask you to work on a case

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42

that wasn't assigned to you if they needed help.

Q. Now, when you were investigating a homicide, was there a lead detective or a specific person who was in charge of investigating that homicide?

A. Yes, usually.

Q. Was that an official designation or just informally you decide that it was somebody's case?

A. Just informally.

Q. Now, having reviewed the documents, do you remember that there was a murder of somebody named Paul Pope?

A. You know, after reading the reports, yes. But before that, I had no recollection.

Q. Whether formally or informally, do you remember who the lead detective was on the Paul Pope investigation?

A. I believe it was Constantino, Massechia and Aronica or Morales might have been. At the time, there was some movement. You know, people move from one

Giardina

43

section to the other because -- but I believe it was just from reading the report actually that it was Constantino and Massechia and I think Morales.

Q. Now, during your time as a homicide detective, did you ever put together a photo array to make an identification?

A. Yes.

Q. There are, you know, a set of photos that could be used as fillers at the Buffalo Police Department; is that right?

A. Yes.

Q. And where were those stored?

A. We would usually go up to the identification bureau and just ask for -- give them a description of what we needed and they would produce mug shots, old mug shots for us.

Q. Would you show the photograph of the person who you were looking to have identified or excluded and then they would choose the fillers?

A. No.

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Giardina

44

Q. So when choosing fillers, would it be correct to say that you would say, you know, I need a heavy set African-American man and then they would go and get people that look like that?

A. Right.

Q. Were there ever any instances where you stepped in and picked out the fillers yourself?

A. Sure.

Q. But there were also instances where they would do it for you?

A. Most of the time, they would give us a stack of pictures and we would go through them and we would decide who we'd like to -- who would we put in the photo array.

Q. Okay. And when you chose your fillers, did you fill out some sort of form?

A. Yes.

Q. Now, after creating a photo array, was there ever an instance where you then showed it to somebody to see if they

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45

could make an identification?

A. Yes.

Q. What was the process that you used in showing somebody a photo array to make an identification?

MS. HUGGINS: Form. You can answer.

A. Well, we would -- it was a -- I believe if I remember right, there was -- over the years, it changed a little bit, but I think when I first started doing it, there was like a file, cardboard or heavy paper and it had six slots in it and you would put the six pictures in there and you would cover up any markings, you know, if there was a mug shot or anything, you would cover those all up and you would just show the -- so it just showed the picture itself. And then you would put some tape on it to hold it in place, and then you would show it to the witness or whoever you wanted to view it.

Q. Was there any particular phrase that you would say to the witness before

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46

showing them the photo array?

A. We would just tell them to take their time and look at each picture individually and let us know if they recognize anybody in that group of pictures.

Q. Did you ever use photo books to make an identification?

A. No, I never did.

Q. Okay. Did you ever see anybody in the precinct use a photo book to make an identification?

A. No.

Q. Were there books of, let's say, maybe many, many mug shots all together that a witness would look through to see if they recognize somebody?

A. No. I never remember seeing anything like that.

Q. Now, can we go to a single page document with a Bates stamp COB22? It's handwritten notes with the date 5-26-97.

That's the one.

MS. HUGGINS: Mark it as 15?

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47

MR. RICKNER: Yes.

(Whereupon, COB22 was marked as Exhibit 15 for identification as of this date by the Reporter.)

BY MR. RICKNER:

Q. Do you recognize the handwriting in Exhibit 15?

A. No.

Q. All right.

MR. RICKNER: I'd like to mark a document as Exhibit 16. It's a document with the Bates stamp COB a bunch of zeros and then 23.

(Whereupon, COB23 through 24 was marked as Exhibit 16 for identification as of this date by the Reporter.)

Q. It actually doesn't appear to be dated. It says File Number 97-083. It looks like this.

A. This one?

MS. HUGGINS: Two-page document?

MR. RICKNER: It's a two-page document, COB23 to 24.

MS. HUGGINS: And then we'll mark

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Giardina

48

it as 16.

Q. Detective, do you recognize the handwriting in Exhibit 16?

A. No.

Q. Next one is COB27 through 30. And it's dated 5/26/97.

MS. HUGGINS: Is this it, Rob?

MR. RICKNER: Yes.

Mark that as Exhibit 17.

(Whereupon, COB27 through 30 was marked as Exhibit 17 for identification as of this date by the Reporter.)

Q. Do you recognize the handwriting in Exhibit 17?

A. No.

Q. I'd like to go to COB31 through 32. It appears to also have a 5/26/97 date on it in the top left and it says Riga at the very top left.

MS. HUGGINS: What again?

MR. RICKNER: 31 through 32.

We're marking that 18.

(Whereupon, COB31 through 32 was marked as Exhibit 18 for identification



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Giardina

49

as of this date by the Reporter.)

Q. Detective, do you recognize the handwriting in Exhibit 18?

A. No.

Q. I'd like to mark a single-page document, COB35. It's got two holes and at the very top it says 97-083.

MS. HUGGINS: 19?

MR. RICKNER: Yes. And mark this as Exhibit 19.

(Whereupon, COB35 was marked as Exhibit 19 for identification as of this date by the Reporter.)

Q. You got it?

A. Yes.

Q. Do you recognize the handwriting in Exhibit 19?

A. No.

Q. Let's go to COB36 through 37.

MS. HUGGINS: 20?

MR. RICKNER: Yup, that's it.

(Whereupon, COB36 through 37 was marked as Exhibit 20 for identification as of this date by the Reporter.)

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50

Q. Do you recognize any of the  
handwriting in Exhibit 20?

A. No.

MS. HUGGINS: Just a second.  
Just flip to the second page. Do you  
recognize the handwriting on Page 2?

A. No.

Q. Bates number COB Page 40 single  
page. Please mark it as Exhibit 21.

(Whereupon, COB40 was marked as  
Exhibit 21 for identification as of  
this date by the Reporter.)

Q. Do you recognize any of the  
handwriting on Exhibit 21?

A. No.

Q. Next one we have COB93  
through 96. Top left-hand corner says  
0450.

MR. RICKNER: Let's mark that as  
Exhibit 22.

(Whereupon, COB93 through 96 was  
marked as Exhibit 22 for identification  
as of this date by the Reporter.)

MS. HUGGINS: And that's going to

Giardina

51

be 22?

MR. RICKNER: Yes.

Q. Do you recognize any of the handwriting in Exhibit 22 on any of the pages?

A. No.

MS. HUGGINS: Look through on the other pages. Do you recognize on any of the other pages?

A. No.

MS. HUGGINS: Okay.

Q. Next one is COB181. It's a single page of a memo book.

MS. HUGGINS: That'll be 23?

MR. RICKNER: Yes, please.

(Whereupon, COB181 was marked as Exhibit 23 for identification as of this date by the Reporter.)

Q. That's the one.

Do you recognize any of the handwriting on Exhibit 23?

A. No.

Q. I'd like to do COB203.

MS. HUGGINS: 24?

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Giardina

52

MR. RICKNER: And that's  
Exhibit 24 please.

(Whereupon, COB203 was marked as  
Exhibit 24 for identification as of  
this date by the Reporter.)

Q. Do you recognize any of the  
handwriting in Exhibit 24?

A. No.

Q. Let's go to COB215. Looks like  
it says 8/10/97 in the top right. We'll  
mark this as Exhibit 25.

(Whereupon, COB215 was marked as  
Exhibit 25 for identification as of  
this date by the Reporter.)

Q. Do you recognize any of the  
handwriting in Exhibit 25?

A. No.

Q. Let's go to COB217.

(Whereupon, COB217 was marked as  
Exhibit 26 for identification as of  
this date by the Reporter.)

Q. Do you recognize any of the  
handwriting in Exhibit 26?

A. No.

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Giardina

53

Q. Let's go to COB226. And mark that as Exhibit 27.

(Whereupon, COB226 was marked as Exhibit 27 for identification as of this date by the Reporter.)

Q. Do you recognize any of the handwriting in Exhibit 27?

A. No.

Q. I'd like to go to COB856. We'll mark this as Exhibit 28.

(Whereupon, COB856 was marked as Exhibit 28 for identification as of this date by the Reporter.)

Q. You found it?

A. Yes.

Q. Do you recognize the handwriting in Exhibit 28?

A. No.

Q. Now can we get COB1003?

MS. HUGGINS: Is this 29?

MR. RICKNER: Yes. Mark it as Exhibit 29.

(Whereupon, COB1003 was marked as Exhibit 29 for identification as of

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Giardina

54

this date by the Reporter.)

Q. That's the one.

Do you recognize the handwriting  
on Exhibit 29?

A. No.

Q. I'd like to mark COB224 as  
Exhibit 30.

(Whereupon, COB224 was marked as  
Exhibit 30 for identification as of  
this date by the Reporter.)

Q. And it's a photograph of a car.

That's the one. Do you recognize  
the handwriting in Exhibit 30?

A. No.

Q. I'd like to turn to COB73. It's  
a single page document, a printout with  
some handwriting on it. We can mark this  
Exhibit 31.

(Whereupon, COB73 was marked as  
Exhibit 31 for identification as of  
this date by the Reporter.)

MS. HUGGINS: 31?

MR. RICKNER: Yes.

Q. Do you have it?

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Giardina

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A. Yup.

Q. Do you recognize any of the  
handwriting on Exhibit 31?

A. No.

Q. I'd like to go to COB63  
through 64 and mark it as Exhibit 32.

(Whereupon, COB63 through 64 was  
marked as Exhibit 32 for identification  
as of this date by the Reporter.)

MS. HUGGINS: Did you say 32?

MR. RICKNER: Mm-hmm.

Q. Do you recognize any of the  
handwriting on Exhibit 32?

A. No.

Q. I'd like to mark COB183 as  
Exhibit 33.

(Whereupon, COB183 was marked as  
Exhibit 33 for identification as of  
this date by the Reporter.)

Q. That's the one.

Do you recognize the handwriting  
on Exhibit 33?

A. No.

Q. I'd like to mark COB110 as 34.

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Giardina

56

(Whereupon, COB110 was marked as Exhibit 34 for identification as of this date by the Reporter.)

Q. Do you recognize any of the handwriting on Exhibit 34?

A. No.

Q. I'd like to look at COB38 and it's sort of a torn yellow sheet, looks like this. Can we mark this as Exhibit 35?

(Whereupon, COB38 was marked as Exhibit 35 for identification as of this date by the Reporter.)

Q. Do you recognize the handwriting in Exhibit 35?

A. No.

Q. I'd like to look at COB65. We can mark that as Exhibit 36.

(Whereupon, COB65 was marked as Exhibit 36 for identification as of this date by the Reporter.)

Q. Do you recognize any of the handwriting in Exhibit 36?

A. No.

Q. Can you tell me what Exhibit 36



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is, by which I mean what is this form?

A. It looks like a -- it's hard to tell because it's pretty dark. It looks like a summons, a type of -- I don't know if it's a parking ticket or --

Q. Okay. Was this a standard form used at the Buffalo Police Department?

A. Looks it. Yeah, looks like it could be a parking ticket or a -- looks like a parking ticket to me.

Q. Okay. Now, in preparing for this deposition, is it fair to say that you looked over several documents?

A. Yes.

Q. And one of those settings of documents was a collection of documents that I provided if you know?

A. I don't know where they came from. I just know they were put in front of me and I looked through them.

MS. HUGGINS: He's looked through case file documents as well as the exhibits that you sent over this morning.

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Giardina 58

Q. Did you see your own handwriting in any of the documents that you reviewed?

A. No.

Q. Okay. This might be a nice natural spot for a break. I don't need lunch. I leave that up to the witness and the court reporter and I guess Maeve as well. I can just push through until 2:00 no problem, but if you guys do want food, maybe now is a good time, maybe it's not. Otherwise, maybe just take 15 just to stretch our legs.

MS. HUGGINS: Yeah, let's just take a quick 15 to stretch our legs.

MR. RICKNER: Okay.

MS. HUGGINS: Thanks.

MR. RICKNER: Thank you.

(Whereupon, a short recess was taken.)

MR. RICKNER: Back on the record.

Q. Detective, during your work at the Buffalo homicide squad, did you ever participate in any lineups?

A. Yes.

Giardina

59

1 Q. Were there ever any instances  
2 where somebody was identified in a lineup  
3 by a witness, but then you made a new  
4 lineup shortly afterwards and then redid it  
5 to see if the witness could identify them  
6 again?  
7

8 MS. HUGGINS: Form. You can  
9 answer.

10 A. Well, we would -- you wouldn't do  
11 it again. You would just change positions.  
12 We'd do it like two or three times. Set it  
13 up, you know, have the six people standing  
14 there, and then if they would identify it,  
15 then we would change everybody up and do it  
16 again. We would probably do that two or  
17 three times, but we would not get a whole  
18 new group of stand-ins.

19 Q. Okay. So if my understanding is  
20 correct, at the Buffalo Police Department,  
21 you'd put together a lineup and if somebody  
22 was identified, you'd then shuffle the same  
23 witness and fillers around and have the  
24 witness look at it again?

25 A. Yes.

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Giardina

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Q. Excuse me. By witness, I mean the same person seeking to be identified.

A. Right. Yes.

Q. And what was the purpose of doing that?

A. Just to change the -- I don't know, just procedure I guess. You know, we just would -- just to try different location, I don't know, just to make sure that it was fair I guess.

Q. If somebody wasn't identified in the first lineup, would you shuffle the person being identified in the fillers around and let them try it again?

A. I think we probably wouldn't.

Q. As you sit here today, can you remember an instance where you did that?

A. No.

Q. We already discussed photo arrays. Was there ever an instance where you put somebody's photos into a photo array with fillers and showed it to a witness but then made another photo array and showed it to the witness again just

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61

like the lineup procedure?

MS. HUGGINS: Form.

A. The same suspect, the same --

Q. The same suspect with different  
fillers.

A. No.

Q. If somebody was placed into a  
photo array and was not identified, would  
you put that suspect into a different photo  
array and let the witness try again?

MS. HUGGINS: Form. You can  
answer.

A. If he didn't identify it, if they  
didn't identify the -- no.

Q. So I'd like to mark Epps 74 as  
Exhibit 37.

(Whereupon, Epps 74 was marked as  
Exhibit 37 for identification as of  
this date by the Reporter.)

MS. HUGGINS: Can you repeat the  
Bates number again?

MR. RICKNER: 74. It's an  
April 16, 1998 memorandum.

A. What was it, 74?

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Giardina

62

Q. Yes. Epps 74.

A. Okay.

Q. Can you identify Exhibit 37 for the record?

A. Yes. It's a departmental -- interdepartmental memo signed by myself.

Q. Are these called P-73s?

A. P-73, right.

Q. Now, I notice that it has both your name and Detective Stambach's name on it; is that right?

A. Right.

Q. But you're the one who signed it?

A. Right.

Q. Does that indicate that this would have been typed up based on your notes?

A. Right.

Q. Did you ever type these up yourself?

A. No.

Q. Now just going to the top section, there's a file number. Do you see that?

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A. Yes.

Q. And then underneath it, there's the name Paul T. Pope?

A. Right.

Q. Does that file number indicate that this is the Pope murder?

A. According to this, it does.

Q. Okay. When it says subject, Paul T. Pope, that means the victim, right?

A. Right.

Q. And in the homicide division. That means the victim's dead?

A. Right.

Q. And each murder gets its own file number?

A. Right.

Q. So based on this File Number 98-073 corresponds to the Paul Pope murder?

A. Right.

Q. Now, it says that the above stated detectives along with Detective Sergeant Chella and Detective Minor went to 92 Marigold. Do you see that?

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A. Yes.

Q. Now, I think we discussed earlier that Chella and Minor were not part of your group of three in 1998?

A. Right.

Q. So would it be fair to say that based on this information, that Detectives Chella and Minor were assisting your group of three with this investigation?

A. Yes.

Q. And it says that there was an anonymous phone tip. Do you see that?

A. Yes.

Q. Sitting here today, do you know who provided that tip?

A. No.

Q. When there was an anonymous phone tip, even though it was anonymous, would there be some sort of record made as to when the tip came in?

A. There could be if somebody would note it and put it in a report.

Q. Was there a formal method of tracking anonymous tips at the Buffalo



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homicide squad in 1998?

A. No, not that I recall.

Q. Okay. And it says that you found somebody named Ronald DeBowes?

A. Yes.

Q. And it said you had information from the victim's girlfriend that DeBowes was a friend of Mr. Pope?

A. Okay.

Q. Do you see that?

A. Yes.

Q. Would this indicate that as of April 16th, 1998, you had already spoken to the victim's girlfriend?

A. Yes.

Q. Do you remember who the victim's girlfriend was?

A. No, not without going through the file and looking.

Q. Okay. We'll get to that in a second.

MR. RICKNER: I'd just like to move on to Epps 75. Mark this as Exhibit 38.

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(Whereupon, Epps 75 was marked as Exhibit 38 for identification as of this date by the Reporter.)

MS. HUGGINS: So Epps 75 is 38?

MR. RICKNER: Yes, please.

Q. Can you identify Exhibit 38 for the record?

A. It's also a P-73.

Q. And now this one is signed by Detective Stambach; is that correct?

A. Right.

Q. Now, did Detective Stambach ever type up his P-73s?

A. No. I believe he did the same thing I did. He put them in for typing.

Q. And would it be correct to say that because Detective Stambach signed this, that he would have been the note taker?

A. Right.

Q. Would you have also taken your own notes?

A. Probably not.

Q. Now, according to this P-73, you

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Giardina

67

went to 1270 Fillmore and met with Wymiko Anderson?

A. Yes.

Q. Do you remember talking to Wymiko Anderson on April 16, 1998?

A. No, not at all.

Q. And it says that you received a sworn statement from her on April 16, 1998?

A. Yes.

Q. Is that correct?

A. Yes, that's what it states.

Q. Do you remember taking a sworn statement from her on April 16, 1998?

A. No.

Q. Do you remember what time of day this interview would have been?

A. It doesn't -- I don't remember and it doesn't -- let me see. It doesn't say in the report.

Q. Okay. I'd like to mark Epps 73 as Exhibit 39.

(Whereupon, Epps 73 was marked as Exhibit 39 for identification as of this date by the Reporter.)

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68

Q. Can you identify Exhibit 39 for the record?

A. It's also a P-73.

Q. And this one's also signed by Mark Stambach?

A. Yes.

Q. And do you have any reason to believe that Detective Stambach would have deviated from his usual procedure of taking notes and then submitting them to be typed up?

A. Right.

MS. HUGGINS: Form.

Q. Do you have any reason to believe that wouldn't have happened here?

A. No.

MS. HUGGINS: Form.

Q. Do you have any independent recollection of this meeting with the witnesses described on Exhibit 39?

A. No, not at all.

Q. Now I'd like to mark Exhibit 40. This one I couldn't find the Bates stamped copy of, so it's the one without a Bates

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Giardina 69

stamp marked with the date April 16, 1998,  
and it involves the Vikki Cash interview.

(Whereupon, a document with the  
date April 16, 1998 was marked as  
Exhibit 40 for identification as of  
this date by the Reporter.)

MS. HUGGINS: Signed by Mark  
Stambach?

MR. RICKNER: Yup.

MS. HUGGINS: And there's a per  
addresses redacted from the middle  
paragraph?

MR. RICKNER: That's the one.

MS. HUGGINS: Okay.

A. Okay.

Q. And can you identify Exhibit 40  
for the record?

A. P-73.

Q. And that involves an interview  
with Vikki Cash?

A. Right, yes.

Q. That interview was done by you  
and Detective Stambach?

A. Yes.

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Q. And is this another P-73 that Mark Stambach would have taken handwritten notes and then submitted to have typed up?

A. Yes.

MS. HUGGINS: Form.

Q. Do you remember anything about the meeting with Vikki Cash?

A. No.

Q. Now, it says after her oral interview she did give a sworn statement?

A. Yes.

Q. Would that statement have been provided on April 16th, 1998?

A. Should have been.

Q. Would you have made a notation that it wasn't performed on that date in your general practice?

A. Right.

MS. HUGGINS: Form.

Q. Now I'd like to mark Epps 104 to 105. It's a two-page document. This is 41.

(Whereupon, Epps 104 to 105 was marked as Exhibit 41 for identification)

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as of this date by the Reporter.)

Q. Now, can you identify Exhibit 41 for the record?

A. It's a statement from Ronald DeBowes.

Q. Now, at the top, it says the statement is taken by and typed by Detective James Giardina. Do you see that?

A. Yes.

Q. Did you, in fact, take and type this statement in Exhibit 41?

A. According to -- yes.

Q. Do you have any independent recollection of this interview?

A. No, not at all.

Q. Now. Just going down to the middle of the statement, do you see the sections where Mr. DeBowes states that Mr. Pope was involved in the drug trade?

A. Yes.

Q. Now, looking at the middle, do you see where it indicates that Mr. Pope would give drugs to somebody named Russell to be sold? Do you see that?

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A. Yup.

Q. Is it fair to say that selling narcotics is relevant information potentially in a homicide investigation?

MS. HUGGINS: Form.

A. Yes.

Q. And would it be correct to say that disputes arise during drug transactions which sometimes result in a homicide?

MS. HUGGINS: Form.

A. Yes.

Q. So would the fact that the victim was involved with dealing drugs with somebody be a significant fact in a homicide investigation?

MS. HUGGINS: Form.

A. Yes.

Q. And if you look at the bottom, the very last question and answer Mr. DeBowes states that Mr. Pope had a large rock several thousand dollars worth?

A. Yes.

Q. What is a large rock to your



Giardina

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knowledge?

A. It's a big chunk of cocaine.

Q. Would that be crack cocaine?

A. Yes.

Q. Would it be correct to say that if somebody refers to rock, that's typically crack?

A. Right.

Q. Now, going to the next page, it says he lives with a girl on Dartmouth?

A. Yup.

Q. Do you know where that street is in Buffalo?

A. Yeah.

Q. Where is it?

A. It's in the we call the Kensington area, Bailey, Kensington, Delavan.

Q. In 1998 how would you describe the Kensington area?

A. Well --

MS. HUGGINS: Well, form.

MR. RICKNER: You know, I could ask a better question.

Giardina

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Q. Was the Kensington area  
considered a high crime area in 1998?

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A. Yeah.

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Q. Now, do you know the street  
Delavan, D-e-l-a-v-a-n?

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A. Yes.

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Q. And do you know the area around  
the intersection of Delavan and Chelsea?

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A. Yes.

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Q. Is Delavan and Chelsea in  
Kensington?

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A. Yes.

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Q. And how close is the intersection  
of Delavan and Chelsea to the Dartmouth  
area that we just discussed?

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A. Specifically I don't recall how  
close they were. It was in the same  
general area but --

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Q. Did you grow up in Buffalo?

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A. Yes.

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Q. Would it be correct to say that  
you lived in Buffalo continuously from  
around the time you were born until 1998?

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A. No. Until -- probably until '73

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I think is when I moved out of the city.

Q. Okay. But as of '73, you were working as a police officer in Buffalo?

A. Right.

Q. So would it be fair to say that from the time you were born through 1998 you were living or working in Buffalo?

A. Right.

Q. You're very familiar with the city at that time?

A. Yeah.

Q. Now, I'd like to go back to Exhibit 37. And please keep Exhibit 41 in front of you.

A. What'd you say about 41?

Q. Keep 41 around, but please take a look at Exhibit 37.

A. Okay.

Q. Now, at the top it says, "On the above date and time, the above-stated detectives along with Sergeant Chella and Detective Minor went to 92 Marigold," right?

A. Yes.

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Q. And then you found Mr. DeBowes and took him back to the homicide bureau, right?

A. Right.

Q. And the date listed on Exhibit 37 is April 16th. Do you see that?

A. Right.

Q. Now, looking at Exhibit 41, it has a date of April 18th; is that right?

A. Right.

Q. And it says the statement is started at 1800 hours or what we'd call 6:00 p.m.?

A. Right.

Q. Looking at Exhibit 73 and Exhibit 41 together, is it possible that there was another statement by Mr. DeBowes?

A. Not that I know of.

Q. Okay.

MS. HUGGINS: We're talking about Exhibits 37 and 41?

MR. RICKNER: Yes.

Q. And what I'm wondering is can you tell me why Exhibit 37 states that

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Mr. DeBowes provided a statement on April 16th, but Exhibit 41 has a date of April 18th?

A. No, I can't.

Q. Is it possible that more than one statement was taken?

MS. HUGGINS: Form.

A. I don't know.

Q. Were there instances where you would interview a witness more than once during a homicide investigation?

A. It's possible, sure.

Q. Would it be correct to say that every time you interviewed a witness, you'd create a P-73 or get a sworn statement?

A. Yes.

Q. Now I'd like to -- unfortunately the Bates number sort of crept over this one, but it's Epps 1837 to Epps 1838.

MS. HUGGINS: It's a two-page document?

MR. RICKNER: That's correct.  
And I'd like to mark it as Exhibit 42, although there does appear to be a

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Post-it that says Exhibit 2 on the copy that I have.

(Whereupon, Epps 1837 to 1838 was marked as Exhibit 42 for identification as of this date by the Reporter.)

Q. Now, at the top, it says that this statement was taken by Detective Stambach and the questions were asked by you; is that correct?

A. Yes.

Q. Would that indicate that Detective Stambach was the one typing it up?

A. Yes.

Q. Now, where is 401 Delaware Avenue inside of Buffalo?

A. It's the Delaware -- it's called the Delaware District. I guess not too far from downtown.

Q. Okay. But it's separate from Kensington?

A. Yes, for sure.

Q. Now, going to the second page at the top, do you see there's questions and

Giardina

79

answers regarding somebody named Russell?

A. Yes.

Q. And is it correct to say that Miss Cash told you and Detective Stambach that Russell and the victim, Paul Pope, hung out together?

A. Yes.

Q. And if you go a little further down, Miss Cash provides a description of Russell; is that correct?

A. Yes.

Q. And in the description, she says, "Black male, light skinned, heavy set, 5-foot 9, 235 pounds or so"?

A. Right.

Q. Now, going back to the Exhibit 40, is it correct to say that Exhibit 40 has the date April 16, 1998?

A. Yes.

Q. And in it it said that you met with a witness, Vikki Cash, and she gave you a sworn statement. Do you see that?

A. Yes.

Q. Now, if you look at Exhibit 42,

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Giardina

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it says that Vikki Cash provided a sworn statement on April 17th, 1998, and that the statement started at 2:00 p.m. Do you see that?

A. Yes.

Q. Do you know why Exhibit 40 is dated April 16th and states that Miss Cash provided a sworn statement on that day when the sworn statement has the date April 17th?

A. No. I have no explanation for that.

Q. Now I'd like to mark Epps 89 and Epps 90 and this is going to be --

MS. HUGGINS: That'll be 43?

MR. RICKNER: Yes. Wymiko Anderson statement.

(Whereupon, Epps 89 and Epps 90 were marked as Exhibit 43 for identification as of this date by the Reporter.)

Q. Now, it's correct to say this statement is dated April 17th and that it started at 7:30 a.m.?



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A. Yes.

Q. And it says that it was typed by Detective Stambach and that the questions were being asked by you; is that correct?

A. Right.

Q. Now, if you go a few lines down, is it correct to say that the witness, Wymiko Anderson, states that Paul Pope is her boyfriend?

A. Yes.

Q. And also the father of her children?

A. Yup.

Q. And looking at the top, Wymiko Anderson had a nickname, Pumpkin?

A. Yes.

Q. Now, if you go down to the bottom two-thirds of the statement, she indicates that she saw Paul Pope leave with Russell around 1:00 and 2:00?

A. Right.

Q. Now, is it correct to say that Paul Pope was killed on April 16th?

A. On what date was that?

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Giardina

82

Q. Is it correct to say that Paul Pope was killed on April 16th?

A. I'm sorry, I didn't hear the date. What was the date?

Q. Was Paul Pope killed on April 16th, 1998?

A. I still didn't hear. Did he say 15?

MS. HUGGINS: Do you know the date that he was murdered other than looking at these documents?

A. No.

Q. That's fine. This isn't a trick question.

MS. HUGGINS: Do you recall the date he was murdered without looking at documents?

A. No, not at all.

MS. HUGGINS: Okay.

Q. Would it be fair to say that this person, Russell, was at least a person of interest after hearing that he had been with Paul Pope prior to his murder?

MS. HUGGINS: And we're talking

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about the Paul Pope investigation?

MR. RICKNER: Yeah, with respect  
to the Paul Pope investigation.

A. Yes.

Q. When somebody is a person of  
interest in a homicide investigation, would  
it have been your practice to get a  
photograph of them if it was available?

A. Sure.

Q. And, in fact, if somebody had  
been arrested in Buffalo beforehand, you  
could get a mugshot of them, right?

A. Right.

Q. Do you know if you got a mugshot  
of Russell Montgomery around this time in  
1998?

A. I don't recall.

Q. If somebody was a person of  
interest in a homicide investigation, would  
you seek to determine what kind of car they  
drove?

A. Yes.

Q. And how would you go about  
determining what kind of car somebody drove

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Giardina

84

in 1998?

A. You could get a DMV check on his name and see if he -- what cars were registered to him.

Q. Was this particularly difficult?

A. No.

Q. Now I'd like to mark Epps 94 as Exhibit 44.

(Whereupon, Epps 94 was marked as Exhibit 44 for identification as of this date by the Reporter.)

A. Okay.

Q. Now, can you identify Exhibit 44 for the record?

A. It's also a P-73.

Q. Now, at the bottom of this document, it states that there's a reference to Detective Stambach's P93. Do you see that?

A. Yes.

Q. Was there a document called a P93?

A. Not that I know of. I believe that's probably a typo.

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Giardina 85

Q. Okay. So that probably refers to a P-73?

A. Right.

Q. Now, it says HBO as an abbreviation here. Do you see that?

A. Yes.

Q. And what does HBO stand for?

A. Homicide Bureau Office.

Q. Now, it refers to a body found in the trunk in the bottom section of Exhibit 44. Do you see that?

A. What am I looking at? What did you want?

Q. There's a reference to a body found in the trunk. Do you see that?

A. Okay. Yes.

Q. Does this refresh your recollection that Paul Pope's body was found in the trunk of a vehicle?

A. No, not at all.

Q. Now I'd like you to mark as Exhibit 45 Epps 0550.

(Whereupon, Epps 0550 was marked as Exhibit 45 for identification as of

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86

this date by the Reporter.)

Q. Now, in this document at the top, it says it is from Detective Sergeant Chella, Detective Minor, and yourself; is that correct?

A. Yes.

Q. If you look at Page 2, you aren't listed as one of the signatories; is that correct?

A. Yes.

Q. Sometimes would P-73 reference officers who didn't ultimately sign the document itself?

A. Right, yes. Usually the person that signed it is the person that actually authored it.

Q. And sometimes the accompanying officer is listed below, right?

A. Yes.

Q. But sometimes not everyone who is there is listed; is that correct?

A. Right.

Q. Do you have any memory of going to 92 Marigold on April 18, 1998?

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Giardina

87

A. No.

Q. Now I'd like you to look at Epps 117 and mark it as Exhibit 46.

(Whereupon, Epps 117 was marked as Exhibit 46 for identification as of this date by the Reporter.)

Q. Now, can you identify Exhibit 46 for the record?

A. P-73.

Q. Okay. And that's dated April 20th, 1998?

A. Yes.

Q. Now, it states here that Melvin Calhoun came to the Homicide Bureau Office with Wymiko Anderson. Do you see that?

A. Yes.

Q. Do you remember Melvin Calhoun coming to the homicide bureau with Wymiko Anderson on April 20th, 1998?

A. No.

Q. Now, it says that he provided an interview and a sworn statement. Do you see that?

A. Yes.

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Giardina

88

Q. Now, I'm going to represent to you that you were not listed on Melvin Calhoun's sworn statement.

A. Okay.

Q. Does that contradict your memory?

A. No.

Q. Can you think of any reason why Detectives Minor and Chella would have interviewed Mr. Calhoun instead of you and Stambach?

MS. HUGGINS: Form.

A. No. Just by choice, you know, we were probably in the office and said you take the statement and, you know, no reason one way or the other.

MS. HUGGINS: Form. Do you remember that happening?

A. No.

Q. Now, in the third paragraph, it says a photo of Mr. Russell Montgomery was shown by Wymiko Anderson to Mr. Calhoun. Do you see that?

A. Yes.

Q. Can you think of any reason why



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Giardina

89

one witness would show another witness an  
identification photograph?

A. No, not at all.

MS. HUGGINS: Form.

Q. Is it fair to say that's kind of  
strange?

MS. HUGGINS: Form.

A. I would -- I would say that's  
maybe a typo. That's the only reason I  
would -- the only explanation I would have  
for that.

Q. Okay. Would it be correct to say  
that it would be more likely that you or  
Mr. Stambach were the ones showing the  
photograph of Russell Montgomery to a  
witness?

A. Right.

MS. HUGGINS: Well, form. You're  
saying in this instance?

MR. RICKNER: No, as part of his  
pattern and practice. He doesn't  
remember, but I can ask him what's  
likely.

A. More than likely, right, that we

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Giardina 90

would have shown -- somebody, a detective  
would have shown the photo, not another  
witness.

Q. Do you know Detective Steven  
Hoffman?

A. No.

Q. Do you know a Detective Steven  
Lehman?

A. No.

MS. HUGGINS: If we could just go  
off the record for a moment?

MR. RICKNER: Sure.

(Whereupon, an off-the-record  
discussion was held.)

MS. HUGGINS: We're all set if  
you want to go back on the record.

MR. RICKNER: Okay.

Q. I want you to take a look at  
Exhibit 14 again. That's the affidavit  
that you signed.

MS. HUGGINS: From the other day?

MR. RICKNER: No, it's not from  
the other day. It's just from the very  
beginning of this deposition.

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Giardina

91

Q. Exhibit 14, did you type up Exhibit 14?

A. No.

Q. Would it be fair to say that somebody from the District Attorney's Office created Exhibit 14?

A. That's what it looks like.

Q. Now, do you remember meeting with somebody from the District Attorney's Office with respect to Exhibit 14 or the case of Cory Epps at all back in the '90s?

A. No, not at all.

Q. Would it have been your general practice to discuss facts with a District Attorney before an affidavit was typed up?

A. Yes.

Q. So would it be correct to say that Exhibit 14 is based on information you provided to the district attorney prior to when it was signed?

A. Right.

Q. As you look at Exhibit 14 today, do you see anything in it that you believe is inaccurate?

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Giardina

92

A. No.

Q. Now, sorry to jump around a bit, but just to go back to Exhibit 43, do you see that?

A. Okay.

Q. And it says the statement was started at 7:30 a.m.; is that right?

A. Yes.

Q. Now, on the second page, it says that the statement was stopped at 8:20 a.m. Do you see that?

A. Yes.

Q. And if I'm doing the math, that's 50 minutes?

A. Yeah.

Q. Did it take 50 minutes to ask the questions and receive the answers in Exhibit 43?

A. From the time we started typing until we finished typing it was the 50 minutes.

Q. Would there have been a conversation with the witness prior to when the typing started?

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Giardina

93

A. More than likely.

Q. Is it possible that there's information that was provided in that 50 minutes that is not reflected in Exhibit 43?

A. In the 50 -- no, what do you mean? In the 50 minutes that we typed it?

Q. Yeah.

A. Or are you talking about the time before --

Q. No. Just in the 50 minutes that it was being typed up.

A. Okay.

Q. Well, let me step back. I may have confused myself.

Would it have been your procedure to ask all of the questions and then type it up?

A. No. We would type the question out, ask the question, then type the question in, then go to the next question.

MS. HUGGINS: When you say type the question, do you mean type the response?

Giardina

94

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2 A. Type the response, we would type  
3 the response and then ask the next  
4 question. Type in the question and then  
5 wait for the answer or the response.

6 Q. What I'm asking is is was there  
7 information provided by the witness that  
8 might not have made it into Exhibit 43 in  
9 the questions and answers?

10 A. It could be. But I would say if  
11 any information she gave us in the  
12 interview before the statement was started,  
13 we would use that as part of the statement.

14 Q. Right. Would there be some  
15 information that you maybe didn't consider  
16 particularly relevant that you'd leave out  
17 of a statement like Exhibit 43?

18 MS. HUGGINS: Form. You can  
19 answer.

20 A. It's possible.

21 Q. Is Exhibit 43 an exact transcript  
22 of the conversation between yourself and  
23 Wymiko Anderson over that 50 minutes?

24 A. Yes.

25 Q. Every word that was said is in

Giardina

95

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Exhibit 43?

MS. HUGGINS: Form.

A. Well, I can't say every word. You know, there might have been a word or two or, you know, asking if they wanted something to drink or something like -- you know, there could have been other conversation, but anything relevant would have been put into the statement.

Q. Was Wymiko Anderson given the opportunity to make any corrections to Exhibit 43 prior to when she signed it?

A. Yes.

Q. And how would she have gone about making those corrections?

A. Well, before she signs it, we give her the statement and have her -- our normal procedure is to after the statement's typed, to give it to the person that made the statement and ask them to read it and tell us if there's anything that needs to be changed.

Q. Okay. Now, I'd like to go to Exhibit 1 actually from the prior

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Giardina

96

deposition if you can pull that up.

A. Okay.

Q. Can you identify the type of document that Exhibit 1 is?

A. I don't know what number it was, but --

MS. HUGGINS: Was there a name for it other than --

A. Yeah, there was probably a number, but I don't remember what the number was. It looks like --

Q. If I told you it was called a Homicide Section Activity Report, would that refresh your recollection?

A. Yeah, could be.

Q. Do you remember filling out documents like Exhibit 1?

A. No, I don't remember ever filling out anything like this. You know, I've seen it.

Q. I'm not talking with respect to the Means homicide or the Pope homicide. I just mean in general.

A. In general I don't remember ever



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Giardina

97

in any case filling out this form.

Q. Do you remember testifying at a hearing with respect to Cory Epps?

A. No.

MR. RICKNER: I'd like to mark this as 47.

(Whereupon, the transcript was marked as Exhibit 47 for identification as of this date by the Reporter.)

MS. HUGGINS: The transcript, correct?

MR. RICKNER: Yes.

Q. Now, prior to this deposition, did you have the opportunity to review your testimony in Exhibit 47?

A. Prior to -- oh, yes.

Q. Prior to us going on the record in this deposition?

A. Yes.

Q. In your review of Exhibit 47, did you see anything that you believed to be inaccurate?

A. No.

Q. Do you adopt that testimony as

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Giardina

98

your testimony today?

MS. HUGGINS: Well, form. He's already testified he doesn't recall giving that testimony.

MR. RICKNER: That's fair.

I'd just like a moment to confer with my associate and then maybe I just want to hunt down one other thing, so maybe can we go off the record for like ten minutes and then I'm probably wrapping up.

Unless you have any questions, Maeve, then maybe now would be a good time.

MS. HUGGINS: I may have one, but I'll let you finish up before.

MR. RICKNER: All right.

(Whereupon, a short recess was taken.)

MR. RICKNER: All right. Back on the record.

Q. Detective, is it fair to say that during your time as a homicide detective that you testified at trial?

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Giardina

99

A. Yes.

Q. Did you also testify in grand jury proceedings?

A. Yes.

Q. Were there ever any instances where you were cross-examined with your grand jury proceedings while you were on the stand?

A. Yes.

Q. Is it fair to say you understand the importance of making sure that you have a clear and accurate record when you're testifying under oath?

A. Right, yes.

Q. Prior to a case going to trial, would you meet with the district attorney?

A. Yes.

Q. If you were a key witness, would you potentially meet with the district attorney multiple times?

A. Yes.

Q. When you met with the district attorney, where would that occur?

A. Usually in the -- at their

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Giardina

100

office.

Q. Did you ever meet with a district attorney at the homicide squad?

A. Once in a while, I would say -- if they happened to be there, they might ask some questions or talk about it. But for the most part, we would go to their office.

Q. Okay. I don't have any questions left at this time.

MR. RICKNER: Maeve, you said you had one more?

EXAMINATION

BY MS. HUGGINS:

Q. Sir, you were shown Exhibits 39 and 40. I'm showing you what's been marked as Exhibits 39 and 40. Do you remember specifically how Detective Stambach created 39 and 40?

A. What do you mean how physically, how physically he --

Q. Meaning do you have a recollection of how he created these P-73s specifically?

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Giardina 101

A. No, not at all.

MS. HUGGINS: Okay. That's all I have.

MR. RICKNER: One follow-up question.

FURTHER EXAMINATION

BY MR. RICKNER:

Q. How many years did you work with Detective Stambach?

A. The whole ten years I was in homicide.

Q. And you described that everybody was broken off into groups of three.

A. Right.

Q. Was he within your group of three for all ten years?

A. Most of it. Yes, I would -- now that I think of it, yes.

Q. Is it fair to say that you're familiar with how Detective Stambach prepares P-73s?

A. Yes.

Q. And when you testified beforehand, would it be correct to say that

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Giardina 102

you were testifying based on your personal knowledge of how Detective Stambach generally did things even if you couldn't remember the specific instance?

A. Yes.

Q. You've been testifying for several hours today; is that fair to say?

A. Yes.

Q. As you sit here today, is there anything that you said that comes to your mind that you'd like to change?

A. No.

Q. And do you understand that you're going to be given a copy of this transcript to review and sign?

A. Yes.

Q. And do you understand that if you make any changes, you can be cross-examined with those changes at trial?

A. Yes.

MR. RICKNER: No further questions.

MS. HUGGINS: Thanks everyone.

I'll take a copy. I prefer it

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Giardina

103

via PDF.

MR. RICKNER: And I would like it  
both ways, hard copy and PDF.

(Time noted: 1:34 p.m.)

Giardina

104

January 21, 2021

## ERRATA

PAGE / LINE

CHANGE / REASON

PIROZZI & HILLMAN  
212-213-5858



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Giardina 105

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JAMES F. GIARDINA

Subscribed and sworn to  
before me this            day  
of                            2021

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CERTIFICATE

STATE OF NEW YORK )

) ss.

COUNTY OF NEW YORK)

I, Jennie Siolidis, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That JAMES F. GIARDINA, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the testimony  
given by such witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage and that I am in no way  
interested in the outcome of this matter.

---

JENNIE SIOLIDIS

January 21, 2021

INDEX

WITNESS	EXAMINATION BY	PAGE
James F. Giardina	Mr. Rickner	4
	Ms. Huggins	100
	Mr. Rickner	101

EXHIBIT	PAGE	
Exhibit 14	22	Epps 00571 through 572
Exhibit 15	47	COB22
Exhibit 16	47	COB23 through 24
Exhibit 17	48	COB27 through 30
Exhibit 18	48	COB31 through 32
Exhibit 19	49	COB35
Exhibit 20	49	COB36 through 37
Exhibit 21	50	COB40
Exhibit 22	50	COB93 through 96
Exhibit 23	51	COB181
Exhibit 24	52	COB203
Exhibit 25	52	COB215
Exhibit 26	52	COB217
Exhibit 27	53	COB226
Exhibit 28	53	COB856
Exhibit 29	53	COB1003

January 21, 2021

INDEX (continued)

EXHIBIT	PAGE	
Exhibit 30	54	COB224
Exhibit 31	54	COB73
Exhibit 32	55	COB63 through 64
Exhibit 33	55	COB183
Exhibit 34	55	COB110
Exhibit 35	56	COB38
Exhibit 36	56	COB65
Exhibit 37	61	Epps 74
Exhibit 38	65	Epps 75
Exhibit 39	67	Epps 73
Exhibit 40	69	A document with the date April 16, 1998
Exhibit 41	70	Epps 104 to 105
Exhibit 42	78	Epps 1837 to 1838
Exhibit 43	80	Epps 89 and Epps 90
Exhibit 44	84	Epps 94
Exhibit 45	85	Epps 0550
Exhibit 46	87	Epps 117
Exhibit 47	97	The transcript

	<b>1970</b> [2] - 6:20, 6:24 <b>1971</b> [7] - 6:23, 6:24, 7:11, 7:17, 8:8, 9:6, 10:3 <b>1981</b> [4] - 9:25, 10:4, 10:10, 10:18 <b>1982</b> [1] - 11:4 <b>1983</b> [1] - 11:4 <b>1990s</b> [1] - 15:3 <b>1995</b> [1] - 12:20 <b>1996</b> [2] - 12:20, 13:17 <b>1997</b> [5] - 13:17, 16:4, 16:9, 20:16, 38:6 <b>1998</b> [24] - 38:9, 61:24, 64:5, 65:2, 65:14, 67:6, 67:9, 67:14, 69:2, 69:5, 70:14, 73:20, 74:3, 74:24, 75:7, 79:19, 80:3, 82:7, 83:17, 84:2, 86:25, 87:12, 87:20, 108:16 <b>1:00</b> [1] - 81:21 <b>1:19-cv-00281-LJV</b> [1] - 1:6 <b>1:34</b> [1] - 103:5	54:10, 54:14, 107:12, 108:6 <b>31</b> [6] - 48:22, 54:19, 54:21, 54:23, 55:4, 108:7 <b>32</b> [9] - 48:18, 48:22, 48:24, 55:7, 55:9, 55:11, 55:14, 107:13, 108:8 <b>33</b> [4] - 55:17, 55:19, 55:23, 108:9 <b>34</b> [4] - 55:25, 56:3, 56:6, 108:10 <b>341</b> [1] - 4:11 <b>35</b> [4] - 56:10, 56:12, 56:15, 108:11 <b>36</b> [5] - 56:18, 56:20, 56:23, 56:25, 108:12 <b>37</b> [12] - 49:20, 49:23, 61:17, 61:19, 62:4, 75:14, 75:18, 76:6, 76:22, 76:25, 107:15, 108:13 <b>38</b> [5] - 65:25, 66:3, 66:5, 66:7, 108:14 <b>39</b> [8] - 67:22, 67:24, 68:2, 68:21, 100:16, 100:18, 100:20, 108:15	92:22, 93:5, 93:7, 93:8, 93:12, 94:23, 107:16, 107:17 <b>50s</b> [1] - 38:13 <b>51</b> [1] - 107:18 <b>52</b> [3] - 107:19, 107:20, 107:21 <b>53</b> [3] - 107:22, 107:23, 107:24 <b>54</b> [2] - 108:6, 108:7 <b>55</b> [3] - 108:8, 108:9, 108:10 <b>56</b> [2] - 108:11, 108:12 <b>571</b> [1] - 22:7 <b>572</b> [2] - 22:15, 107:9	
<b>0</b>			<b>6</b>	
<b>1</b>	<b>1</b> [3] - 95:25, 96:5, 96:18 <b>100</b> [1] - 107:6 <b>10005</b> [1] - 2:8 <b>101</b> [1] - 107:7 <b>104</b> [3] - 70:21, 70:24, 108:17 <b>105</b> [3] - 70:22, 70:24, 108:17 <b>10:45</b> [1] - 1:14 <b>1112</b> [1] - 2:16 <b>117</b> [3] - 87:4, 87:5, 108:22 <b>12</b> [3] - 15:6, 15:7, 15:14 <b>1270</b> [1] - 67:2 <b>14</b> [12] - 2:6, 22:13, 22:15, 22:18, 90:20, 91:2, 91:3, 91:7, 91:11, 91:19, 91:23, 107:9 <b>14228</b> [1] - 4:12 <b>14292</b> [1] - 2:17 <b>15</b> [8] - 12:19, 46:25, 47:4, 47:8, 58:12, 58:15, 82:9, 107:10 <b>16</b> [14] - 9:2, 47:12, 47:16, 48:2, 48:4, 61:24, 67:6, 67:9, 67:14, 69:2, 69:5, 79:19, 107:11, 108:16 <b>1603</b> [1] - 2:7 <b>16th</b> [8] - 65:14, 70:14, 76:7, 77:3, 80:8, 81:24, 82:3, 82:7 <b>17</b> [5] - 13:10, 48:10, 48:12, 48:15, 107:12 <b>17th</b> [3] - 80:3, 80:11, 80:24 <b>18</b> [5] - 48:23, 48:25, 49:4, 86:25, 107:13 <b>1800</b> [1] - 76:13 <b>1837</b> [3] - 77:20, 78:4, 108:18 <b>1838</b> [3] - 77:20, 78:4, 108:18 <b>18th</b> [2] - 76:10, 77:4 <b>19</b> [5] - 49:9, 49:11, 49:13, 49:18, 107:14	<b>2</b>  <b>2</b> [3] - 50:7, 78:2, 86:8 <b>20</b> [5] - 33:22, 49:21, 49:24, 50:3, 107:15 <b>2000</b> [1] - 16:10 <b>2006</b> [3] - 7:6, 7:7, 34:2 <b>2021</b> [5] - 1:13, 104:2, 105:15, 107:2, 108:2 <b>20th</b> [2] - 87:12, 87:20 <b>21</b> [8] - 1:13, 50:10, 50:12, 50:15, 104:2, 107:2, 107:16, 108:2 <b>22</b> [6] - 50:21, 50:23, 51:2, 51:5, 107:9, 107:17 <b>23</b> [5] - 47:14, 51:15, 51:18, 51:22, 107:18 <b>235</b> [1] - 79:15 <b>24</b> [10] - 41:2, 41:7, 47:15, 47:24, 51:25, 52:3, 52:5, 52:8, 107:11, 107:19 <b>24-hour</b> [1] - 41:6 <b>25</b> [4] - 52:12, 52:14, 52:17, 107:20 <b>26</b> [3] - 52:21, 52:24, 107:21 <b>27</b> [4] - 53:3, 53:5, 53:8, 107:22 <b>28</b> [4] - 53:11, 53:13, 53:18, 107:23 <b>29</b> [5] - 53:21, 53:23, 53:25, 54:5, 107:24 <b>2:00</b> [3] - 58:9, 80:4, 81:21	<b>4</b>  <b>4</b> [1] - 107:6 <b>40</b> [11] - 50:9, 68:23, 69:6, 69:17, 79:18, 79:19, 80:7, 100:17, 100:18, 100:20, 108:16 <b>401</b> [1] - 78:16 <b>41</b> [12] - 70:23, 70:25, 71:3, 71:12, 75:14, 75:16, 75:17, 76:9, 76:17, 76:22, 77:3, 108:17 <b>42</b> [4] - 77:24, 78:5, 79:25, 108:18 <b>43</b> [11] - 80:16, 80:20, 92:4, 92:19, 93:6, 94:8, 94:17, 94:21, 95:2, 95:13, 108:19 <b>44</b> [5] - 84:9, 84:11, 84:14, 85:12, 108:20 <b>45</b> [3] - 85:23, 85:25, 108:21 <b>46</b> [4] - 87:4, 87:6, 87:8, 108:22 <b>47</b> [7] - 97:7, 97:9, 97:16, 97:21, 107:10, 107:11, 108:23 <b>48</b> [2] - 107:12, 107:13 <b>49</b> [2] - 107:14, 107:15	<b>60</b> [1] - 39:18 <b>61</b> [1] - 108:13 <b>64</b> [3] - 55:7, 55:8, 108:8 <b>65</b> [2] - 2:15, 108:14 <b>67</b> [1] - 108:15 <b>69</b> [1] - 108:16 <b>6:00</b> [1] - 76:14
		<b>4</b>	<b>7</b>	
			<b>7</b> [1] - 38:7 <b>70</b> [1] - 108:17 <b>70s</b> [1] - 38:8 <b>73</b> [4] - 67:21, 67:23, 76:16, 108:15 <b>74</b> [6] - 61:16, 61:18, 61:23, 61:25, 62:2, 108:13 <b>75</b> [4] - 65:24, 66:2, 66:5, 108:14 <b>78</b> [1] - 108:18 <b>7:30</b> [2] - 80:25, 92:8	
		<b>4</b>	<b>8</b>	
			<b>8/10/97</b> [1] - 52:11 <b>80</b> [1] - 108:19 <b>80s</b> [1] - 38:8 <b>84</b> [1] - 108:20 <b>85</b> [1] - 108:21 <b>87</b> [1] - 108:22 <b>89</b> [3] - 80:14, 80:19, 108:19 <b>8:20</b> [1] - 92:11	
		<b>5</b>	<b>9</b>	
	<b>3</b>	<b>5-26-97</b> [1] - 46:23 <b>5-foot</b> [1] - 79:15 <b>5/26/97</b> [2] - 48:7, 48:19 <b>50</b> [10] - 92:15, 92:17,	<b>9</b> [1] - 79:15 <b>90</b> [3] - 80:15, 80:19, 108:19 <b>92</b> [3] - 63:25, 75:23, 86:25 <b>94</b> [3] - 84:8, 84:10, 108:20	

<p>96<sup>[3]</sup> - 50:18, 50:22, 107:17</p> <p>97<sup>[3]</sup> - 38:15, 108:23</p> <p>97-083<sup>[2]</sup> - 47:19, 49:8</p> <p>98-073<sup>[1]</sup> - 63:19</p>	<p>77:4, 79:19, 80:3, 80:8, 80:11, 80:24, 81:24, 82:3, 82:7, 86:25, 87:12, 87:20, 108:16</p> <p>area<sup>[13]</sup> - 17:11, 18:25, 28:10, 28:15, 28:16, 35:21, 73:18, 73:21, 74:2, 74:3, 74:8, 74:16, 74:19</p> <p>arise<sup>[1]</sup> - 72:9</p> <p>Aronica<sup>[3]</sup> - 27:11, 27:14, 42:23</p> <p>ARONICA<sup>[1]</sup> - 1:11</p> <p>array<sup>[9]</sup> - 43:8, 44:18, 44:24, 45:5, 46:2, 60:23, 60:24, 61:9, 61:11</p> <p>arrays<sup>[1]</sup> - 60:21</p> <p>arrest<sup>[2]</sup> - 35:15, 39:9</p> <p>arrested<sup>[1]</sup> - 83:12</p> <p>articles<sup>[1]</sup> - 29:5</p> <p>assign<sup>[1]</sup> - 41:21</p> <p>assigned<sup>[5]</sup> - 13:9, 15:23, 41:13, 41:14, 42:2</p> <p>assistance<sup>[1]</sup> - 41:20</p> <p>assisting<sup>[1]</sup> - 64:9</p> <p>associate<sup>[1]</sup> - 98:8</p> <p>assume<sup>[1]</sup> - 10:10</p> <p>assumed<sup>[1]</sup> - 9:20</p> <p>attached<sup>[1]</sup> - 32:16</p> <p>attorney<sup>[5]</sup> - 91:20, 99:17, 99:21, 99:24, 100:4</p> <p>Attorney<sup>[4]</sup> - 2:5, 2:14, 12:14, 91:16</p> <p>Attorney's<sup>[2]</sup> - 91:6, 91:10</p> <p>authored<sup>[1]</sup> - 86:17</p> <p>authorized<sup>[1]</sup> - 3:11</p> <p>available<sup>[2]</sup> - 20:11, 83:9</p> <p>Avenue<sup>[1]</sup> - 78:16</p> <p>average<sup>[2]</sup> - 39:15, 39:16</p> <p>aware<sup>[4]</sup> - 18:22, 28:5, 28:13, 37:23</p>	<p>below<sup>[1]</sup> - 86:19</p> <p>better<sup>[1]</sup> - 73:25</p> <p>between<sup>[4]</sup> - 3:5, 6:24, 16:8, 94:22</p> <p>big<sup>[3]</sup> - 16:24, 33:20, 73:3</p> <p>Birchfield's<sup>[7]</sup> - 34:19, 34:21, 34:25, 35:5, 35:13, 35:16, 35:20</p> <p>bit<sup>[2]</sup> - 45:11, 92:3</p> <p>Black<sup>[1]</sup> - 79:14</p> <p>blood<sup>[1]</sup> - 106:17</p> <p>board<sup>[1]</sup> - 18:3</p> <p>boards<sup>[1]</sup> - 17:23</p> <p>body<sup>[3]</sup> - 85:10, 85:15, 85:19</p> <p>BOHAN<sup>[1]</sup> - 1:7</p> <p>Bohen<sup>[2]</sup> - 23:9, 23:22</p> <p>BOHEN<sup>[1]</sup> - 23:9</p> <p>Bohen's<sup>[1]</sup> - 24:6</p> <p>book<sup>[9]</sup> - 31:16, 31:19, 31:21, 32:13, 32:23, 33:6, 33:8, 46:12, 51:14</p> <p>books<sup>[4]</sup> - 33:24, 34:9, 46:8, 46:15</p> <p>born<sup>[2]</sup> - 74:24, 75:7</p> <p>bottom<sup>[7]</sup> - 21:11, 21:14, 22:4, 72:20, 81:18, 84:17, 85:11</p> <p>box<sup>[1]</sup> - 36:10</p> <p>boyfriend<sup>[1]</sup> - 81:10</p> <p>Bradley<sup>[1]</sup> - 40:8</p> <p>Brady<sup>[2]</sup> - 8:15, 8:19</p> <p>Bratos<sup>[1]</sup> - 24:7</p> <p>BRATOS<sup>[1]</sup> - 24:8</p> <p>break<sup>[1]</sup> - 58:6</p> <p>breakdown<sup>[1]</sup> - 24:7</p> <p>breakfast<sup>[2]</sup> - 40:16, 41:9</p> <p>broken<sup>[2]</sup> - 15:15, 101:14</p> <p>brought<sup>[1]</sup> - 14:21</p> <p>Buffalo<sup>[27]</sup> - 4:15, 6:22, 7:5, 7:10, 9:19, 13:12, 13:13, 15:3, 28:16, 28:25, 34:18, 35:18, 38:6, 39:12, 40:17, 43:13, 57:8, 58:23, 59:20, 64:25, 73:14, 74:20, 74:23, 75:4, 75:8, 78:17, 83:12</p> <p>BUFFALO<sup>[2]</sup> - 1:7, 2:12</p> <p>building<sup>[3]</sup> - 6:12, 19:7, 23:11</p> <p>bulletin<sup>[2]</sup> - 17:23, 18:3</p> <p>bunch<sup>[1]</sup> - 47:14</p> <p>Bureau<sup>[2]</sup> - 85:9, 87:15</p> <p>bureau<sup>[3]</sup> - 43:17, 76:3, 87:19</p> <p>burglaries<sup>[1]</sup> - 13:6</p> <p>BY<sup>[7]</sup> - 2:9, 2:18, 4:6, 47:6, 100:15, 101:8, 107:5</p>	<p><b>C</b></p> <p>cabinets<sup>[1]</sup> - 18:13</p> <p>Calhoun<sup>[4]</sup> - 87:15, 87:18, 88:10, 88:22</p> <p>Calhoun's<sup>[1]</sup> - 88:4</p> <p>camera<sup>[1]</sup> - 20:11</p> <p>Captain<sup>[2]</sup> - 27:18, 27:19</p> <p>captain<sup>[2]</sup> - 27:20, 27:21</p> <p>car<sup>[3]</sup> - 54:12, 83:21, 83:25</p> <p>cardboard<sup>[1]</sup> - 45:13</p> <p>care<sup>[1]</sup> - 9:3</p> <p>cars<sup>[1]</sup> - 84:4</p> <p>case<sup>[17]</sup> - 18:14, 21:22, 24:15, 24:16, 24:17, 25:12, 25:14, 29:14, 37:14, 41:13, 41:23, 41:25, 42:11, 57:23, 91:12, 97:2, 99:16</p> <p>cases<sup>[6]</sup> - 5:6, 5:9, 5:13, 18:23, 26:4, 39:8</p> <p>Cash<sup>[8]</sup> - 69:3, 69:21, 70:8, 79:5, 79:10, 79:22, 80:2, 80:8</p> <p>categories<sup>[1]</sup> - 36:11</p> <p>CERTIFICATE<sup>[1]</sup> - 106:2</p> <p>certify<sup>[2]</sup> - 106:9, 106:15</p> <p>chain<sup>[1]</sup> - 40:15</p> <p>change<sup>[4]</sup> - 59:11, 59:15, 60:7, 102:12</p> <p>CHANGE/REASON<sup>[1]</sup> - 104:5</p> <p>changed<sup>[2]</sup> - 45:11, 95:23</p> <p>changes<sup>[2]</sup> - 102:19, 102:20</p> <p>charge<sup>[2]</sup> - 29:16, 42:6</p> <p>CHARLES<sup>[1]</sup> - 1:10</p> <p>Charles<sup>[1]</sup> - 27:10</p> <p>check<sup>[2]</sup> - 30:24, 84:3</p> <p>CHELLA<sup>[1]</sup> - 1:10</p> <p>Chella<sup>[10]</sup> - 26:8, 26:11, 26:18, 26:22, 63:24, 64:4, 64:9, 75:22, 86:5, 88:9</p> <p>Chelsea<sup>[3]</sup> - 74:9, 74:11, 74:15</p> <p>Chief<sup>[2]</sup> - 27:17, 27:19</p> <p>chief<sup>[6]</sup> - 15:8, 15:11, 17:4, 17:9, 27:22, 41:24</p> <p>CHIEF<sup>[1]</sup> - 1:11</p> <p>children<sup>[1]</sup> - 81:13</p> <p>choice<sup>[1]</sup> - 88:13</p> <p>choose<sup>[1]</sup> - 43:24</p> <p>choosing<sup>[1]</sup> - 44:2</p> <p>chose<sup>[1]</sup> - 44:19</p> <p>chunk<sup>[1]</sup> - 73:3</p> <p>circle<sup>[1]</sup> - 18:19</p> <p>CITY<sup>[2]</sup> - 1:7, 2:12</p> <p>city<sup>[2]</sup> - 75:2, 75:11</p> <p>civil<sup>[2]</sup> - 5:6, 27:20</p> <p>classes<sup>[1]</sup> - 11:10</p> <p>classroom<sup>[1]</sup> - 13:25</p>
<p><b>A</b></p> <p>a.m<sup>[4]</sup> - 1:14, 80:25, 92:8, 92:11</p> <p>abbreviation<sup>[1]</sup> - 85:6</p> <p>above-stated<sup>[1]</sup> - 75:21</p> <p>academy<sup>[3]</sup> - 7:12, 11:8, 14:2</p> <p>access<sup>[1]</sup> - 19:20</p> <p>accompanying<sup>[1]</sup> - 86:18</p> <p>according<sup>[3]</sup> - 63:8, 66:25, 71:13</p> <p>accurate<sup>[1]</sup> - 99:13</p> <p>action<sup>[1]</sup> - 106:16</p> <p>Activity<sup>[1]</sup> - 96:14</p> <p>additional<sup>[3]</sup> - 11:8, 13:25, 41:20</p> <p>address<sup>[1]</sup> - 4:10</p> <p>addresses<sup>[1]</sup> - 69:12</p> <p>administer<sup>[1]</sup> - 3:12</p> <p>adopt<sup>[1]</sup> - 97:25</p> <p>affidavit<sup>[4]</sup> - 22:18, 22:21, 90:20, 91:16</p> <p>affidavits<sup>[1]</sup> - 21:25</p> <p>African<sup>[1]</sup> - 44:5</p> <p>African-American<sup>[1]</sup> - 44:5</p> <p>afterwards<sup>[1]</sup> - 59:5</p> <p>agents<sup>[1]</sup> - 14:22</p> <p>ago<sup>[6]</sup> - 24:4, 24:24, 25:8, 26:12, 28:9, 40:2</p> <p>AGREED<sup>[3]</sup> - 3:4, 3:9, 3:13</p> <p>alleged<sup>[2]</sup> - 5:9, 5:13</p> <p>American<sup>[1]</sup> - 44:5</p> <p>Amherst<sup>[1]</sup> - 4:11</p> <p>AND<sup>[4]</sup> - 1:11, 3:4, 3:9, 3:13</p> <p>Anderson<sup>[12]</sup> - 39:23, 40:5, 67:3, 67:6, 80:18, 81:9, 81:16, 87:16, 87:20, 88:22, 94:23, 95:11</p> <p>anonymous<sup>[4]</sup> - 64:13, 64:18, 64:19, 64:25</p> <p>answer<sup>[8]</sup> - 6:2, 12:3, 45:8, 59:9, 61:13, 72:21, 94:5, 94:19</p> <p>answers<sup>[3]</sup> - 79:2, 92:18, 94:9</p> <p>Anthony<sup>[1]</sup> - 25:21</p> <p>ANTHONY<sup>[1]</sup> - 1:9</p> <p>appear<sup>[2]</sup> - 47:18, 77:25</p> <p>APPEARANCES<sup>[1]</sup> - 2:2</p> <p>April<sup>[24]</sup> - 61:24, 65:14, 67:6, 67:9, 67:14, 69:2, 69:5, 70:14, 76:7, 76:10, 77:3,</p>	<p><b>B</b></p> <p>Bailey<sup>[1]</sup> - 73:18</p> <p>band<sup>[2]</sup> - 33:19, 33:25</p> <p>bar<sup>[1]</sup> - 34:22</p> <p>based<sup>[5]</sup> - 62:17, 63:18, 64:8, 91:19, 102:2</p> <p>basic<sup>[1]</sup> - 7:12</p> <p>basket<sup>[2]</sup> - 30:12, 30:13</p> <p>Bates<sup>[8]</sup> - 22:3, 46:22, 47:13, 50:9, 61:22, 68:24, 68:25, 77:19</p> <p>became<sup>[3]</sup> - 10:17, 10:23, 11:6</p> <p>become<sup>[1]</sup> - 28:5</p> <p>beforehand<sup>[2]</sup> - 83:12, 101:25</p> <p>beginning<sup>[3]</sup> - 14:7, 16:9, 90:25</p>		

<p><b>clear</b> [3] - 8:22, 34:8, 99:13  <b>clearance</b> [3] - 39:2, 39:7, 39:11  <b>cleared</b> [1] - 39:9  <b>clearly</b> [1] - 6:7  <b>close</b> [2] - 74:14, 74:18  <b>closest</b> [1] - 19:23  <b>COB</b> [2] - 47:13, 50:9  <b>COB1003</b> [3] - 53:20, 53:24, 107:24  <b>COB110</b> [3] - 55:25, 56:2, 108:10  <b>COB181</b> [3] - 51:13, 51:17, 107:18  <b>COB183</b> [3] - 55:16, 55:18, 108:9  <b>COB203</b> [3] - 51:24, 52:4, 107:19  <b>COB215</b> [3] - 52:10, 52:13, 107:20  <b>COB217</b> [3] - 52:19, 52:20, 107:21  <b>COB22</b> [3] - 46:22, 47:3, 107:10  <b>COB224</b> [3] - 54:7, 54:9, 108:6  <b>COB226</b> [3] - 53:2, 53:4, 107:22  <b>COB23</b> [3] - 47:15, 47:24, 107:11  <b>COB27</b> [3] - 48:6, 48:11, 107:12  <b>COB31</b> [3] - 48:17, 48:24, 107:13  <b>COB35</b> [3] - 49:7, 49:12, 107:14  <b>COB36</b> [3] - 49:20, 49:23, 107:15  <b>COB38</b> [3] - 56:8, 56:11, 108:11  <b>COB40</b> [2] - 50:11, 107:16  <b>COB63</b> [3] - 55:6, 55:8, 108:8  <b>COB65</b> [3] - 56:17, 56:19, 108:12  <b>COB73</b> [3] - 54:16, 54:20, 108:7  <b>COB856</b> [3] - 53:10, 53:12, 107:23  <b>COB93</b> [3] - 50:17, 50:22, 107:17  <b>cocaine</b> [2] - 73:3, 73:4  <b>coffee</b> [1] - 41:9  <b>collection</b> [2] - 34:8, 57:17  <b>coming</b> [1] - 87:19  <b>communications</b> [1] - 28:7  <b>company</b> [2] - 14:20, 14:24  <b>compared</b> [1] - 39:14  <b>composite</b> [1] - 36:3  <b>computer</b> [1] - 36:6  <b>computers</b> [3] - 17:16,</p>	<p>17:20, 19:21  <b>conduct</b> [1] - 10:5  <b>confer</b> [1] - 98:7  <b>confession</b> [1] - 20:12  <b>confused</b> [1] - 93:16  <b>consider</b> [1] - 94:15  <b>considered</b> [1] - 74:3  <b>Constantino</b> [5] - 25:22, 25:25, 26:5, 42:22, 43:4  <b>CONSTANTINO</b> [1] - 1:9  <b>continued</b> [1] - 108:3  <b>continuously</b> [3] - 16:2, 16:11, 74:23  <b>contradict</b> [1] - 88:6  <b>conversation</b> [3] - 92:24, 94:22, 95:9  <b>convicted</b> [1] - 37:24  <b>Conwell</b> [2] - 15:9, 15:10  <b>copy</b> [6] - 30:25, 68:25, 78:2, 102:15, 102:25, 103:4  <b>corner</b> [4] - 21:12, 21:14, 22:4, 50:18  <b>CORPORATION</b> [1] - 2:13  <b>correct</b> [28] - 36:2, 38:22, 44:3, 59:20, 66:11, 66:17, 67:11, 72:8, 73:6, 74:22, 77:14, 77:23, 78:10, 79:4, 79:11, 79:18, 80:23, 81:5, 81:8, 81:23, 82:2, 86:6, 86:10, 86:22, 89:13, 91:18, 97:12, 101:25  <b>corrections</b> [2] - 95:12, 95:16  <b>corresponds</b> [1] - 63:19  <b>CORY</b> [1] - 1:4  <b>Cory</b> [9] - 29:2, 29:6, 29:10, 37:5, 37:10, 37:14, 37:15, 91:12, 97:4  <b>counsel</b> [5] - 3:5, 26:15, 26:17, 26:23, 28:7  <b>COUNSEL'S</b> [1] - 2:13  <b>country</b> [1] - 39:17  <b>COUNTY</b> [1] - 106:5  <b>couple</b> [3] - 4:23, 17:17, 21:4  <b>COURT</b> [1] - 1:2  <b>court</b> [4] - 6:7, 6:14, 18:23, 58:8  <b>cover</b> [2] - 45:16, 45:18  <b>crack</b> [2] - 73:4, 73:8  <b>create</b> [1] - 77:16  <b>created</b> [4] - 37:2, 91:7, 100:19, 100:24  <b>creating</b> [1] - 44:23  <b>crept</b> [1] - 77:19  <b>crime</b> [1] - 74:3  <b>crimes</b> [1] - 13:3  <b>criminal</b> [2] - 9:11, 37:14  <b>cross</b> [2] - 99:7, 102:19  <b>cross-examined</b> [2] - 99:7, 102:19</p>	<p><b>custody</b> [1] - 29:7</p> <p style="text-align: center;"><b>D</b></p> <p><b>dark</b> [1] - 57:4  <b>Dartmouth</b> [2] - 73:11, 74:15  <b>date</b> [52] - 22:16, 28:7, 46:23, 47:5, 47:17, 48:13, 48:19, 49:2, 49:14, 49:25, 50:13, 50:24, 51:19, 52:6, 52:15, 52:22, 53:6, 53:14, 54:2, 54:11, 54:22, 55:10, 55:20, 56:4, 56:13, 56:21, 61:20, 66:4, 67:25, 69:2, 69:5, 69:7, 70:17, 71:2, 75:21, 76:6, 76:10, 77:3, 78:6, 79:19, 80:10, 80:21, 81:25, 82:5, 82:11, 82:17, 84:12, 86:2, 87:7, 97:10, 108:16  <b>dated</b> [5] - 47:19, 48:7, 80:8, 80:24, 87:11  <b>days</b> [5] - 19:19, 21:4, 23:17, 26:12, 39:25  <b>dead</b> [1] - 63:13  <b>dealing</b> [1] - 72:15  <b>DeBowes</b> [8] - 65:5, 65:8, 71:6, 71:19, 72:22, 76:2, 76:18, 77:2  <b>decide</b> [2] - 42:10, 44:16  <b>default</b> [1] - 41:17  <b>defendant</b> [2] - 2:14, 9:11  <b>defendants</b> [1] - 12:10  <b>Defendants</b> [1] - 1:12  <b>Delavan</b> [5] - 73:19, 74:6, 74:9, 74:11, 74:15  <b>DEHAVAN</b> [1] - 74:6  <b>Delaware</b> [3] - 78:16, 78:18, 78:19  <b>Department</b> [12] - 4:16, 6:22, 7:5, 7:11, 9:19, 14:10, 15:4, 34:18, 35:19, 43:13, 57:8, 59:20  <b>DEPARTMENT</b> [1] - 2:12  <b>department</b> [1] - 37:18  <b>departmental</b> [1] - 62:6  <b>departments</b> [1] - 14:22  <b>deposition</b> [12] - 1:17, 3:10, 3:15, 4:20, 5:19, 57:13, 90:25, 96:2, 97:14, 97:19, 106:11, 106:13  <b>depositions</b> [5] - 4:25, 5:5, 5:8, 5:12, 5:17  <b>describe</b> [2] - 31:18, 73:20  <b>described</b> [2] - 68:21, 101:13  <b>description</b> [3] - 43:18, 79:10, 79:13  <b>designation</b> [1] - 42:9  <b>desk</b> [6] - 17:13, 17:23,</p>	<p>30:11, 30:12, 33:11, 33:19  <b>desks</b> [3] - 16:25, 17:7, 19:21  <b>DETECTIVE</b> [6] - 1:7, 1:7, 1:8, 1:8, 1:9, 1:10  <b>Detective</b> [41] - 4:13, 16:7, 23:9, 24:15, 24:20, 25:3, 25:6, 25:15, 25:21, 25:25, 26:5, 26:11, 26:17, 26:22, 26:25, 27:7, 27:10, 27:14, 62:11, 63:23, 63:24, 66:11, 66:13, 66:18, 68:9, 69:24, 71:9, 75:23, 78:8, 78:13, 79:5, 81:4, 84:19, 86:4, 86:5, 90:5, 90:8, 100:19, 101:10, 101:21, 102:3  <b>detective</b> [28] - 4:16, 4:19, 10:17, 10:23, 11:6, 12:13, 12:24, 12:25, 13:15, 13:20, 16:6, 17:6, 19:6, 24:11, 26:7, 36:19, 36:24, 37:10, 40:20, 42:5, 42:20, 43:7, 48:3, 49:3, 58:22, 90:2, 98:23, 98:24  <b>Detectives</b> [2] - 64:8, 88:9  <b>detectives</b> [5] - 14:5, 15:7, 15:14, 63:23, 75:22  <b>determine</b> [1] - 83:21  <b>determining</b> [1] - 83:25  <b>deviated</b> [1] - 68:10  <b>different</b> [17] - 6:25, 14:22, 19:18, 23:16, 31:12, 31:20, 35:11, 36:11, 36:13, 36:14, 36:15, 36:16, 38:21, 60:9, 61:5, 61:10  <b>difficult</b> [1] - 84:6  <b>discuss</b> [5] - 25:9, 26:13, 26:21, 28:3, 91:15  <b>discussed</b> [5] - 25:14, 29:13, 60:20, 64:3, 74:16  <b>discussion</b> [1] - 90:15  <b>dishonest</b> [1] - 5:14  <b>disputes</b> [1] - 72:9  <b>district</b> [5] - 91:20, 99:17, 99:20, 99:23, 100:3  <b>DISTRICT</b> [2] - 1:2, 1:2  <b>District</b> [5] - 12:14, 78:19, 91:6, 91:10, 91:15  <b>division</b> [1] - 63:12  <b>DMV</b> [1] - 84:3  <b>document</b> [17] - 21:12, 46:22, 47:12, 47:13, 47:22, 47:24, 49:7, 54:17, 69:4, 70:22, 77:22, 84:18, 84:22, 86:3, 86:14, 96:5, 108:16  <b>documents</b> [12] - 22:6, 23:4, 40:4, 42:14, 57:14, 57:17, 57:23, 58:3, 82:12, 82:18, 96:18  <b>dollars</b> [1] - 72:23  <b>done</b> [4] - 7:22, 13:3, 22:23, 69:23</p>
--	--	---	--

<p><b>down</b> [7] - 6:7, 33:16, 71:17, 79:10, 81:7, 81:18, 98:9</p> <p><b>downtown</b> [1] - 78:20</p> <p><b>drawing</b> [1] - 36:3</p> <p><b>drink</b> [1] - 95:7</p> <p><b>Drive</b> [1] - 4:11</p> <p><b>drove</b> [2] - 83:22, 83:25</p> <p><b>drug</b> [2] - 71:20, 72:9</p> <p><b>drugs</b> [2] - 71:24, 72:15</p> <p><b>duly</b> [2] - 4:3, 106:12</p> <p><b>during</b> [17] - 7:16, 7:23, 8:7, 9:15, 12:2, 12:6, 16:15, 17:24, 36:23, 37:9, 41:15, 41:17, 43:6, 58:22, 72:9, 77:12, 98:24</p>	<p><b>excuse</b> [1] - 60:2</p> <p><b>Exhibit</b> [161] - 22:13, 22:15, 22:18, 47:4, 47:8, 47:12, 47:16, 48:4, 48:10, 48:12, 48:15, 48:25, 49:4, 49:11, 49:13, 49:18, 49:24, 50:3, 50:10, 50:12, 50:15, 50:21, 50:23, 51:5, 51:18, 51:22, 52:3, 52:5, 52:8, 52:12, 52:14, 52:17, 52:21, 52:24, 53:3, 53:5, 53:8, 53:11, 53:13, 53:18, 53:23, 53:25, 54:5, 54:8, 54:10, 54:14, 54:19, 54:21, 55:4, 55:7, 55:9, 55:14, 55:17, 55:19, 55:23, 56:3, 56:6, 56:10, 56:12, 56:15, 56:18, 56:20, 56:23, 56:25, 61:17, 61:19, 62:4, 65:25, 66:3, 66:7, 67:22, 67:24, 68:2, 68:21, 68:23, 69:6, 69:17, 70:25, 71:3, 71:12, 75:14, 75:18, 76:6, 76:9, 76:16, 76:17, 76:25, 77:3, 77:24, 78:2, 78:5, 79:18, 79:19, 79:25, 80:7, 80:20, 84:9, 84:11, 84:14, 85:12, 85:23, 85:25, 87:4, 87:6, 87:8, 90:20, 91:2, 91:3, 91:7, 91:11, 91:19, 91:23, 92:4, 92:19, 93:6, 94:8, 94:17, 94:21, 95:2, 95:13, 95:25, 96:5, 96:18, 97:9, 97:16, 97:21, 107:9, 107:10, 107:11, 107:12, 107:13, 107:14, 107:15, 107:16, 107:17, 107:18, 107:19, 107:20, 107:21, 107:22, 107:23, 107:24, 108:6, 108:7, 108:8, 108:9, 108:10, 108:11, 108:12, 108:13, 108:14, 108:15, 108:16, 108:17, 108:18, 108:19, 108:20, 108:21, 108:22, 108:23</p> <p><b>EXHIBIT</b> [2] - 107:8, 108:5</p> <p><b>exhibits</b> [1] - 57:24</p> <p><b>Exhibits</b> [3] - 76:22, 100:16, 100:18</p> <p><b>exonerated</b> [1] - 29:11</p> <p><b>experience</b> [1] - 30:4</p> <p><b>explanation</b> [2] - 80:12, 89:11</p> <p><b>extra</b> [1] - 16:20</p> <p><b>eyes</b> [2] - 36:13, 36:15</p>	<p><b>facts</b> [1] - 91:15</p> <p><b>fair</b> [14] - 17:18, 57:13, 60:11, 64:7, 72:3, 75:6, 82:21, 89:6, 91:5, 98:6, 98:23, 99:11, 101:20, 102:8</p> <p><b>fairly</b> [1] - 39:14</p> <p><b>familiar</b> [4] - 29:4, 36:18, 75:10, 101:21</p> <p><b>Family</b> [4] - 40:11, 40:13, 40:18, 40:23</p> <p><b>far</b> [4] - 16:21, 30:3, 36:12, 78:19</p> <p><b>father</b> [1] - 81:12</p> <p><b>FBI</b> [2] - 14:16, 14:22</p> <p><b>few</b> [2] - 5:18, 81:7</p> <p><b>fighths</b> [2] - 35:10, 35:12</p> <p><b>File</b> [2] - 47:19, 63:18</p> <p><b>file</b> [18] - 18:13, 18:14, 18:16, 21:8, 29:14, 29:22, 29:24, 30:5, 30:8, 30:14, 37:22, 38:4, 45:13, 57:23, 62:24, 63:6, 63:15, 65:20</p> <p><b>files</b> [2] - 18:12, 29:17</p> <p><b>filing</b> [1] - 3:14</p> <p><b>fill</b> [1] - 44:20</p> <p><b>fillers</b> [9] - 43:12, 43:24, 44:2, 44:10, 44:20, 59:23, 60:14, 60:23, 61:6</p> <p><b>filling</b> [3] - 96:17, 96:19, 97:2</p> <p><b>Fillmore</b> [1] - 67:2</p> <p><b>final</b> [1] - 36:25</p> <p><b>fine</b> [1] - 82:14</p> <p><b>finish</b> [1] - 98:17</p> <p><b>finished</b> [2] - 5:25, 92:21</p> <p><b>first</b> [7] - 5:20, 10:18, 14:3, 28:5, 37:4, 45:12, 60:13</p> <p><b>five</b> [1] - 14:4</p> <p><b>five-day</b> [1] - 14:4</p> <p><b>flip</b> [1] - 50:6</p> <p><b>follow</b> [1] - 101:5</p> <p><b>follow-up</b> [1] - 101:5</p> <p><b>follows</b> [1] - 4:4</p> <p><b>food</b> [1] - 58:10</p> <p><b>force</b> [1] - 5:10</p> <p><b>forget</b> [1] - 19:17</p> <p><b>forgot</b> [1] - 24:9</p> <p><b>form</b> [31] - 3:7, 8:14, 18:11, 25:17, 34:3, 39:5, 44:21, 45:7, 57:2, 57:7, 59:8, 61:3, 61:12, 68:14, 68:18, 70:6, 70:20, 72:6, 72:12, 72:18, 73:23, 77:8, 88:12, 88:17, 89:5, 89:8, 89:19, 94:18, 95:3, 97:2, 98:3</p> <p><b>formal</b> [1] - 64:24</p> <p><b>formally</b> [1] - 42:19</p> <p><b>forth</b> [1] - 106:11</p> <p><b>four</b> [6] - 15:17, 15:19, 15:21, 23:15, 31:24, 38:21</p> <p><b>frequently</b> [2] - 16:14,</p>	<p>16:16</p> <p><b>friend</b> [1] - 65:9</p> <p><b>front</b> [2] - 57:20, 75:15</p> <p><b>full</b> [2] - 33:9, 33:12</p> <p><b>FURTHER</b> [3] - 3:9, 3:13, 101:7</p>
<b>E</b>		<b>G</b>	
<p><b>eight</b> [3] - 24:24, 31:24, 31:25</p> <p><b>either</b> [1] - 16:18</p> <p><b>end</b> [1] - 30:14</p> <p><b>enforcement</b> [3] - 7:2, 7:8, 8:16</p> <p><b>enter</b> [1] - 30:7</p> <p><b>Epps</b> [44] - 22:12, 22:14, 29:3, 29:6, 29:10, 37:5, 37:10, 37:15, 61:16, 61:18, 62:2, 65:24, 66:2, 66:5, 67:21, 67:23, 70:21, 70:24, 77:20, 78:4, 80:14, 80:15, 80:19, 84:8, 84:10, 85:23, 85:24, 87:3, 87:5, 91:12, 97:4, 107:9, 108:13, 108:14, 108:15, 108:17, 108:18, 108:19, 108:20, 108:21, 108:22</p> <p><b>EPPS</b> [1] - 1:4</p> <p><b>Epps'</b> [1] - 37:14</p> <p><b>ERRATA</b> [1] - 104:3</p> <p><b>established</b> [1] - 25:2</p> <p><b>estimate</b> [1] - 24:25</p> <p><b>eventually</b> [3] - 10:17, 30:13, 33:20</p> <p><b>evidence</b> [6] - 8:20, 8:21, 9:9, 9:10, 11:25, 12:9</p> <p><b>exact</b> [4] - 11:2, 38:12, 38:16, 94:21</p> <p><b>exactly</b> [1] - 5:21</p> <p><b>EXAMINATION</b> [4] - 4:5, 100:14, 101:7, 107:5</p> <p><b>examined</b> [2] - 99:7, 102:19</p> <p><b>example</b> [3] - 15:16, 16:2, 18:8</p> <p><b>except</b> [1] - 3:6</p> <p><b>excessive</b> [1] - 5:9</p> <p><b>excluded</b> [1] - 43:23</p> <p><b>exculpatory</b> [4] - 9:9, 11:24, 12:7, 12:15</p>		<p><b>G-i-a-r-d-i-n-a</b> [1] - 4:9</p> <p><b>general</b> [6] - 28:16, 70:18, 74:19, 91:14, 96:24, 96:25</p> <p><b>generally</b> [2] - 18:22, 102:4</p> <p><b>Giardina</b> [3] - 4:8, 71:9, 107:6</p> <p><b>GIARDINA</b> [5] - 1:9, 1:18, 4:2, 105:9, 106:10</p> <p><b>girl</b> [1] - 73:11</p> <p><b>girlfriend</b> [3] - 65:8, 65:15, 65:18</p> <p><b>given</b> [4] - 38:21, 95:11, 102:15, 106:14</p> <p><b>graduate</b> [1] - 6:19</p> <p><b>grand</b> [2] - 99:3, 99:8</p> <p><b>great</b> [1] - 6:18</p> <p><b>Green</b> [1] - 4:11</p> <p><b>ground</b> [1] - 5:18</p> <p><b>group</b> [11] - 14:16, 16:4, 16:10, 23:16, 24:6, 24:10, 46:6, 59:18, 64:5, 64:9, 101:16</p> <p><b>groups</b> [5] - 15:17, 15:19, 15:21, 23:15, 101:14</p> <p><b>grow</b> [1] - 74:20</p> <p><b>guess</b> [5] - 40:16, 58:8, 60:8, 60:11, 78:19</p> <p><b>guys</b> [1] - 58:10</p>	
<b>F</b>		<b>H</b>	
<p><b>face</b> [3] - 36:12, 36:16, 36:25</p> <p><b>fact</b> [4] - 71:11, 72:14, 72:16, 83:11</p>		<p><b>hairstyles</b> [1] - 36:16</p> <p><b>hall</b> [1] - 19:17</p> <p><b>hand</b> [4] - 21:12, 21:14, 22:4, 50:18</p> <p><b>handled</b> [1] - 14:20</p> <p><b>handling</b> [1] - 36:20</p> <p><b>handwriting</b> [25] - 47:7, 48:4, 48:14, 49:4, 49:17, 50:3, 50:7, 50:15, 51:5, 51:22, 52:8, 52:17, 52:24, 53:8, 53:17, 54:4, 54:14, 54:18, 55:4, 55:14, 55:22, 56:6, 56:14, 56:23, 58:2</p> <p><b>handwritten</b> [7] - 30:17, 30:18, 30:20, 30:25, 31:2, 46:23, 70:3</p> <p><b>hang</b> [1] - 41:4</p> <p><b>hard</b> [2] - 57:3, 103:4</p> <p><b>HBO</b> [2] - 85:5, 85:8</p> <p><b>head</b> [1] - 6:6</p>	



<p>hear<sup>[3]</sup> - 34:19, 82:4, 82:8  heard<sup>[3]</sup> - 37:7, 37:8, 37:15  hearing<sup>[2]</sup> - 82:23, 97:4  heavy<sup>[3]</sup> - 44:4, 45:13, 79:14  held<sup>[2]</sup> - 7:7, 90:15  hello<sup>[2]</sup> - 4:14, 24:2  help<sup>[4]</sup> - 16:19, 16:21, 42:3  hereby<sup>[1]</sup> - 106:9  HEREBY<sup>[1]</sup> - 3:4  hereinbefore<sup>[1]</sup> - 106:11  hereto<sup>[1]</sup> - 3:6  high<sup>[5]</sup> - 6:19, 38:13, 38:14, 39:14, 74:3  highest<sup>[1]</sup> - 38:14  hmm<sup>[1]</sup> - 55:12  Hoffman<sup>[1]</sup> - 90:6  hold<sup>[3]</sup> - 6:25, 22:9, 45:21  holding<sup>[1]</sup> - 14:8  holes<sup>[1]</sup> - 49:7  homicide<sup>[38]</sup> - 13:4, 13:23, 13:24, 15:5, 16:23, 18:10, 18:18, 18:23, 19:23, 27:22, 31:12, 32:5, 32:7, 34:4, 36:23, 39:12, 41:11, 41:17, 41:21, 42:5, 42:7, 43:7, 58:23, 63:12, 65:2, 72:5, 72:11, 72:17, 76:3, 77:12, 83:7, 83:20, 87:19, 96:23, 98:24, 100:4, 101:12  Homicide<sup>[3]</sup> - 85:9, 87:15, 96:14  homicides<sup>[5]</sup> - 18:5, 38:5, 38:15, 38:24, 39:11  hours<sup>[4]</sup> - 41:2, 41:7, 76:13, 102:8  HUGGINS<sup>[72]</sup> - 2:18, 8:14, 12:3, 18:11, 21:16, 21:19, 25:17, 26:14, 34:3, 39:5, 45:7, 46:25, 47:22, 47:25, 48:8, 48:21, 49:9, 49:21, 50:5, 50:25, 51:8, 51:12, 51:15, 51:25, 53:21, 54:23, 55:11, 57:22, 58:14, 58:17, 59:8, 61:3, 61:12, 61:21, 66:5, 68:14, 68:18, 69:8, 69:11, 69:15, 70:6, 70:20, 72:6, 72:12, 72:18, 73:23, 76:21, 77:8, 77:21, 80:16, 82:10, 82:16, 82:20, 82:25, 88:12, 88:17, 89:5, 89:8, 89:19, 90:11, 90:16, 90:22, 93:23, 94:18, 95:3, 96:8, 97:11, 98:3, 98:16, 100:15, 101:3, 102:24  Huggins<sup>[1]</sup> - 107:6  hung<sup>[1]</sup> - 79:7  hunt<sup>[1]</sup> - 98:9</p>	<p style="text-align: center;"><b>I</b></p> <p>identification<sup>[41]</sup> - 22:16, 43:9, 43:17, 45:2, 45:6, 46:9, 46:13, 47:4, 47:16, 48:12, 48:25, 49:13, 49:24, 50:12, 50:23, 51:18, 52:5, 52:14, 52:21, 53:5, 53:13, 53:25, 54:10, 54:21, 55:9, 55:19, 56:3, 56:12, 56:20, 61:19, 66:3, 67:24, 69:6, 70:25, 78:5, 80:21, 84:11, 85:25, 87:6, 89:3, 97:9  identifications<sup>[1]</sup> - 10:8  identified<sup>[7]</sup> - 43:23, 59:3, 59:22, 60:3, 60:12, 60:14, 61:9  identify<sup>[13]</sup> - 21:13, 59:6, 59:14, 61:14, 61:15, 62:4, 66:7, 68:2, 69:17, 71:3, 84:14, 87:8, 96:4  identikit<sup>[1]</sup> - 35:24  identikits<sup>[3]</sup> - 18:9, 36:20, 36:25  importance<sup>[1]</sup> - 99:12  in-person<sup>[2]</sup> - 7:19, 8:2  inaccurate<sup>[2]</sup> - 91:25, 97:23  inches<sup>[2]</sup> - 31:25  incident<sup>[1]</sup> - 21:4  independent<sup>[3]</sup> - 40:4, 68:19, 71:14  INDEX<sup>[2]</sup> - 107:3, 108:3  indicate<sup>[4]</sup> - 62:16, 63:6, 65:13, 78:12  indicates<sup>[2]</sup> - 71:23, 81:19  individual<sup>[1]</sup> - 37:5  individually<sup>[1]</sup> - 46:5  informally<sup>[3]</sup> - 42:10, 42:12, 42:19  information<sup>[13]</sup> - 12:7, 12:8, 12:15, 17:24, 18:15, 64:8, 65:7, 72:4, 91:19, 93:4, 94:7, 94:11, 94:15  initial<sup>[1]</sup> - 20:21  innocent<sup>[1]</sup> - 9:12  inside<sup>[1]</sup> - 78:17  instance<sup>[5]</sup> - 44:24, 60:18, 60:21, 89:20, 102:5  instances<sup>[8]</sup> - 12:12, 29:23, 32:12, 44:8, 44:12, 59:2, 77:10, 99:6  instead<sup>[1]</sup> - 88:10  instruction<sup>[2]</sup> - 7:17, 8:9  instructions<sup>[1]</sup> - 7:20  interdepartmental<sup>[1]</sup> - 62:7  interest<sup>[3]</sup> - 82:23, 83:7, 83:20  interested<sup>[1]</sup> - 106:18</p>	<p>interrogate<sup>[1]</sup> - 19:13  interrogation<sup>[3]</sup> - 19:3, 19:11, 19:22  intersection<sup>[2]</sup> - 74:9, 74:14  interview<sup>[12]</sup> - 20:6, 20:12, 20:23, 67:17, 69:3, 69:20, 69:23, 70:11, 71:15, 77:11, 87:23, 94:12  interviewed<sup>[3]</sup> - 21:6, 77:15, 88:10  interviews<sup>[2]</sup> - 21:2, 22:23  investigate<sup>[1]</sup> - 41:18  investigates<sup>[1]</sup> - 13:2  investigating<sup>[2]</sup> - 42:4, 42:7  investigation<sup>[16]</sup> - 20:19, 20:22, 22:24, 23:6, 35:3, 37:25, 41:11, 42:21, 64:10, 72:5, 72:17, 77:12, 83:2, 83:4, 83:7, 83:20  investigations<sup>[1]</sup> - 18:18  involved<sup>[2]</sup> - 71:20, 72:15  involvement<sup>[1]</sup> - 37:13  involves<sup>[2]</sup> - 69:3, 69:20  involving<sup>[1]</sup> - 11:24  IS<sup>[3]</sup> - 3:4, 3:9, 3:13  issues<sup>[1]</sup> - 35:11  IT<sup>[3]</sup> - 3:4, 3:9, 3:13  itself<sup>[3]</sup> - 33:17, 45:20, 86:14</p> <p style="text-align: center;"><b>J</b></p> <p>Jacqueline<sup>[1]</sup> - 40:8  JAMES<sup>[5]</sup> - 1:9, 1:17, 4:2, 105:9, 106:10  James<sup>[3]</sup> - 4:8, 71:9, 107:6  January<sup>[5]</sup> - 1:13, 28:11, 104:2, 107:2, 108:2  JENNIE<sup>[1]</sup> - 106:22  Jennie<sup>[2]</sup> - 1:19, 106:7  job<sup>[7]</sup> - 11:13, 11:14, 11:15, 11:16, 11:19, 11:23, 12:6  John<sup>[3]</sup> - 23:9, 23:22, 24:6  JOHN<sup>[1]</sup> - 1:7  join<sup>[1]</sup> - 6:21  joined<sup>[1]</sup> - 10:19  JOSEPH<sup>[1]</sup> - 1:11  jump<sup>[1]</sup> - 92:3  jumping<sup>[1]</sup> - 5:25  jury<sup>[2]</sup> - 99:4, 99:8</p> <p style="text-align: center;"><b>K</b></p> <p>keep<sup>[5]</sup> - 5:22, 32:6, 33:18, 75:14, 75:17  keeping<sup>[1]</sup> - 29:17  Kensington<sup>[6]</sup> - 73:18,</p>	<p>73:21, 74:2, 74:12, 78:22  kept<sup>[3]</sup> - 29:19, 29:21, 35:19  key<sup>[1]</sup> - 99:19  killed<sup>[3]</sup> - 81:24, 82:3, 82:6  kind<sup>[5]</sup> - 7:21, 9:2, 83:21, 83:25, 89:6  knowledge<sup>[2]</sup> - 73:2, 102:3</p> <p style="text-align: center;"><b>L</b></p> <p>L-a-n-c<sup>[1]</sup> - 31:10  Lanc<sup>[1]</sup> - 31:9  larcenies<sup>[1]</sup> - 13:6  large<sup>[2]</sup> - 72:23, 72:25  last<sup>[13]</sup> - 23:21, 24:19, 25:5, 25:24, 26:2, 26:10, 26:18, 27:6, 27:9, 27:13, 27:15, 27:24, 72:21  late<sup>[4]</sup> - 15:3, 35:6, 36:7, 40:24  law<sup>[3]</sup> - 6:25, 7:8, 8:16  LAW<sup>[1]</sup> - 2:12  lawsuit<sup>[7]</sup> - 25:18, 25:19, 26:21, 28:3, 28:6, 28:13, 29:10  lawyer<sup>[1]</sup> - 22:3  lead<sup>[2]</sup> - 42:5, 42:20  learned<sup>[3]</sup> - 12:6, 29:10, 37:5  least<sup>[3]</sup> - 4:24, 24:3, 82:22  leave<sup>[3]</sup> - 58:7, 81:20, 94:16  left<sup>[8]</sup> - 12:22, 34:2, 34:4, 34:6, 48:19, 48:20, 50:18, 100:11  left-hand<sup>[1]</sup> - 50:18  legal<sup>[3]</sup> - 31:21, 31:22  legs<sup>[2]</sup> - 58:13, 58:15  Lehman<sup>[1]</sup> - 90:9  lieutenant<sup>[5]</sup> - 15:8, 15:9, 17:3, 17:8, 41:25  light<sup>[1]</sup> - 79:14  likely<sup>[4]</sup> - 89:14, 89:24, 89:25, 93:2  lines<sup>[1]</sup> - 81:7  lineup<sup>[12]</sup> - 7:18, 7:19, 7:21, 8:2, 8:10, 11:17, 11:21, 59:3, 59:5, 59:21, 60:13, 61:2  lineups<sup>[2]</sup> - 10:5, 58:24  listed<sup>[5]</sup> - 76:6, 86:9, 86:19, 86:22, 88:3  live<sup>[1]</sup> - 28:16  lived<sup>[1]</sup> - 74:23  lives<sup>[1]</sup> - 73:11  living<sup>[1]</sup> - 75:8  local<sup>[4]</sup> - 14:21, 28:18, 28:21, 34:22  location<sup>[1]</sup> - 60:10</p>
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<p><b>look</b> <sup>[16]</sup> - 18:8, 18:16, 44:6, 46:4, 46:17, 51:8, 56:8, 56:17, 59:24, 72:20, 75:18, 79:25, 86:8, 87:3, 90:19, 91:23</p> <p><b>looked</b> <sup>[4]</sup> - 34:14, 57:14, 57:21, 57:22</p> <p><b>looking</b> <sup>[11]</sup> - 18:4, 40:3, 43:22, 65:20, 71:22, 76:9, 76:16, 81:15, 82:12, 82:17, 85:13</p> <p><b>looks</b> <sup>[11]</sup> - 21:24, 47:20, 52:10, 56:9, 57:3, 57:4, 57:9, 57:10, 91:8, 96:12</p> <p><b>low</b> <sup>[1]</sup> - 38:13</p> <p><b>lunch</b> <sup>[1]</sup> - 58:7</p> <p><b>Lyons</b> <sup>[2]</sup> - 16:7, 16:11</p>	<p><b>matter</b> <sup>[1]</sup> - 106:18</p> <p><b>mean</b> <sup>[11]</sup> - 21:16, 23:12, 23:24, 30:10, 39:7, 57:2, 60:2, 93:8, 93:24, 96:24, 100:21</p> <p><b>meaning</b> <sup>[7]</sup> - 6:14, 7:18, 9:10, 25:17, 36:25, 41:16, 100:23</p> <p><b>means</b> <sup>[3]</sup> - 39:3, 63:10, 63:13</p> <p><b>Means</b> <sup>[4]</sup> - 20:16, 22:23, 23:6, 96:23</p> <p><b>meet</b> <sup>[3]</sup> - 99:17, 99:20, 100:3</p> <p><b>meeting</b> <sup>[4]</sup> - 26:14, 68:20, 70:8, 91:9</p> <p><b>meetings</b> <sup>[1]</sup> - 26:16</p> <p><b>Melvin</b> <sup>[3]</sup> - 87:14, 87:18, 88:3</p> <p><b>memo</b> <sup>[11]</sup> - 31:16, 31:18, 32:13, 32:23, 33:5, 33:8, 33:15, 33:24, 34:8, 51:14, 62:7</p> <p><b>memorandum</b> <sup>[1]</sup> - 61:24</p> <p><b>memory</b> <sup>[2]</sup> - 86:24, 88:6</p> <p><b>met</b> <sup>[3]</sup> - 67:2, 79:21, 99:23</p> <p><b>method</b> <sup>[1]</sup> - 64:24</p> <p><b>Michael</b> <sup>[1]</sup> - 16:7</p> <p><b>middle</b> <sup>[5]</sup> - 28:11, 41:8, 69:12, 71:18, 71:22</p> <p><b>might</b> <sup>[11]</sup> - 9:10, 12:10, 26:3, 28:8, 33:21, 33:22, 42:23, 58:5, 94:8, 95:5, 100:6</p> <p><b>mind</b> <sup>[1]</sup> - 102:12</p> <p><b>mini</b> <sup>[1]</sup> - 31:23</p> <p><b>Minor</b> <sup>[9]</sup> - 24:12, 24:15, 24:20, 63:24, 64:4, 64:9, 75:23, 86:5, 88:9</p> <p><b>MINOR</b> <sup>[1]</sup> - 1:8</p> <p><b>minutes</b> <sup>[8]</sup> - 92:15, 92:17, 92:22, 93:5, 93:8, 93:12, 94:23, 98:11</p> <p><b>Miss</b> <sup>[3]</sup> - 79:5, 79:10, 80:8</p> <p><b>moment</b> <sup>[2]</sup> - 90:12, 98:7</p> <p><b>Montgomery</b> <sup>[5]</sup> - 37:21, 37:24, 83:16, 88:21, 89:16</p> <p><b>month</b> <sup>[3]</sup> - 7:16, 8:7, 28:9</p> <p><b>months</b> <sup>[3]</sup> - 7:15, 9:7, 9:15</p> <p><b>Morales</b> <sup>[2]</sup> - 42:23, 43:5</p> <p><b>morning</b> <sup>[2]</sup> - 4:13, 57:25</p> <p><b>most</b> <sup>[8]</sup> - 13:2, 16:12, 21:9, 30:3, 33:12, 44:14, 100:8, 101:18</p> <p><b>mostly</b> <sup>[1]</sup> - 11:14</p> <p><b>mouths</b> <sup>[2]</sup> - 36:12, 36:15</p> <p><b>move</b> <sup>[3]</sup> - 15:23, 42:25, 65:24</p> <p><b>moved</b> <sup>[1]</sup> - 75:2</p> <p><b>movement</b> <sup>[1]</sup> - 42:25</p> <p><b>MR</b> <sup>[28]</sup> - 4:6, 47:6, 48:9,</p>	<p>58:21, 61:23, 65:23, 66:6, 69:10, 69:14, 73:24, 76:23, 77:23, 80:17, 83:3, 89:21, 90:13, 90:18, 90:23, 97:6, 97:13, 98:6, 98:18, 98:21, 100:12, 101:5, 101:8, 102:22, 103:3</p> <p><b>MS</b> <sup>[71]</sup> - 8:14, 12:3, 18:11, 21:16, 21:19, 25:17, 26:14, 34:3, 39:5, 45:7, 46:25, 47:22, 47:25, 48:8, 48:21, 49:9, 49:21, 50:5, 50:25, 51:8, 51:12, 51:15, 51:25, 53:21, 54:23, 55:11, 57:22, 58:14, 58:17, 59:8, 61:3, 61:12, 61:21, 66:5, 68:14, 68:18, 69:8, 69:11, 69:15, 70:6, 70:20, 72:6, 72:12, 72:18, 73:23, 76:21, 77:8, 77:21, 80:16, 82:10, 82:16, 82:20, 82:25, 88:12, 88:17, 89:5, 89:8, 89:19, 90:11, 90:16, 90:22, 93:23, 94:18, 95:3, 96:8, 97:11, 98:3, 98:16, 100:15, 101:3, 102:24</p> <p><b>mug</b> <sup>[4]</sup> - 43:19, 45:17, 46:16</p> <p><b>mugshot</b> <sup>[2]</sup> - 83:13, 83:15</p> <p><b>multiple</b> <sup>[1]</sup> - 99:21</p> <p><b>murder</b> <sup>[7]</sup> - 22:23, 37:24, 42:15, 63:7, 63:15, 63:20, 82:24</p> <p><b>murdered</b> <sup>[3]</sup> - 20:15, 82:11, 82:17</p>	<p>4:12, 106:9</p> <p><b>news</b> <sup>[2]</sup> - 28:19, 29:6</p> <p><b>News</b> <sup>[1]</sup> - 28:25</p> <p><b>next</b> <sup>[9]</sup> - 13:20, 19:5, 19:8, 48:6, 50:17, 51:13, 73:10, 93:22, 94:3</p> <p><b>Niagara</b> <sup>[1]</sup> - 2:15</p> <p><b>nice</b> <sup>[1]</sup> - 58:5</p> <p><b>nickname</b> <sup>[1]</sup> - 81:16</p> <p><b>night</b> <sup>[4]</sup> - 15:16, 15:25, 19:20, 41:8</p> <p><b>nights</b> <sup>[1]</sup> - 23:18</p> <p><b>none</b> <sup>[2]</sup> - 23:7, 40:6</p> <p><b>normal</b> <sup>[2]</sup> - 31:3, 95:19</p> <p><b>North</b> <sup>[2]</sup> - 13:13, 40:17</p> <p><b>nose</b> <sup>[1]</sup> - 36:12</p> <p><b>noses</b> <sup>[1]</sup> - 36:14</p> <p><b>Notary</b> <sup>[2]</sup> - 1:20, 106:8</p> <p><b>notation</b> <sup>[1]</sup> - 70:16</p> <p><b>note</b> <sup>[2]</sup> - 64:23, 66:19</p> <p><b>notebook</b> <sup>[1]</sup> - 32:6</p> <p><b>notebooks</b> <sup>[1]</sup> - 32:4</p> <p><b>noted</b> <sup>[1]</sup> - 103:5</p> <p><b>notes</b> <sup>[11]</sup> - 30:17, 30:18, 30:20, 31:2, 32:3, 32:7, 46:23, 62:18, 66:23, 68:11, 70:4</p> <p><b>nothing</b> <sup>[3]</sup> - 6:15, 20:21, 25:10</p> <p><b>notice</b> <sup>[2]</sup> - 1:19, 62:10</p> <p><b>number</b> <sup>[13]</sup> - 21:11, 21:14, 22:3, 33:16, 50:9, 61:22, 62:24, 63:6, 63:16, 77:19, 96:6, 96:11, 96:12</p> <p><b>Number</b> <sup>[2]</sup> - 47:19, 63:19</p> <p><b>numbers</b> <sup>[3]</sup> - 22:4, 38:12, 38:17</p> <p><b>NY</b> <sup>[2]</sup> - 2:8, 2:17</p> <p><b>NYPD</b> <sup>[1]</sup> - 14:17</p>
<p><b>machine</b> <sup>[1]</sup> - 30:21</p> <p><b>MAEVE</b> <sup>[1]</sup> - 2:18</p> <p><b>Maeve</b> <sup>[4]</sup> - 22:8, 58:8, 98:14, 100:12</p> <p><b>Main</b> <sup>[1]</sup> - 34:22</p> <p><b>main</b> <sup>[1]</sup> - 19:9</p> <p><b>male</b> <sup>[1]</sup> - 79:14</p> <p><b>man</b> <sup>[1]</sup> - 44:5</p> <p><b>Marigold</b> <sup>[3]</sup> - 63:25, 75:23, 86:25</p> <p><b>Marilyn</b> <sup>[1]</sup> - 31:9</p> <p><b>mark</b> <sup>[31]</sup> - 22:12, 46:25, 47:11, 47:25, 48:10, 49:6, 49:10, 50:10, 50:20, 52:12, 53:2, 53:11, 53:22, 54:7, 54:18, 55:7, 55:16, 55:25, 56:10, 56:18, 61:16, 65:24, 67:21, 68:23, 70:21, 77:24, 80:14, 84:8, 85:22, 87:4, 97:6</p> <p><b>MARK</b> <sup>[1]</sup> - 1:8</p> <p><b>Mark</b> <sup>[5]</sup> - 16:6, 25:3, 68:6, 69:8, 70:3</p> <p><b>marked</b> <sup>[36]</sup> - 22:15, 47:3, 47:16, 48:12, 48:25, 49:12, 49:24, 50:11, 50:23, 51:17, 52:4, 52:13, 52:20, 53:4, 53:12, 53:24, 54:9, 54:20, 55:9, 55:18, 56:2, 56:11, 56:19, 61:18, 66:2, 67:23, 69:2, 69:5, 70:25, 78:5, 80:20, 84:10, 85:24, 87:5, 97:9, 100:17</p> <p><b>marking</b> <sup>[1]</sup> - 48:23</p> <p><b>markings</b> <sup>[1]</sup> - 45:16</p> <p><b>marriage</b> <sup>[1]</sup> - 106:17</p> <p><b>Massechia</b> <sup>[4]</sup> - 27:2, 27:7, 42:23, 43:5</p> <p><b>MASSECHIA</b> <sup>[2]</sup> - 1:10, 27:4</p> <p><b>math</b> <sup>[1]</sup> - 92:14</p>	<p><b>matter</b> <sup>[1]</sup> - 106:18</p> <p><b>mean</b> <sup>[11]</sup> - 21:16, 23:12, 23:24, 30:10, 39:7, 57:2, 60:2, 93:8, 93:24, 96:24, 100:21</p> <p><b>meaning</b> <sup>[7]</sup> - 6:14, 7:18, 9:10, 25:17, 36:25, 41:16, 100:23</p> <p><b>means</b> <sup>[3]</sup> - 39:3, 63:10, 63:13</p> <p><b>Means</b> <sup>[4]</sup> - 20:16, 22:23, 23:6, 96:23</p> <p><b>meet</b> <sup>[3]</sup> - 99:17, 99:20, 100:3</p> <p><b>meeting</b> <sup>[4]</sup> - 26:14, 68:20, 70:8, 91:9</p> <p><b>meetings</b> <sup>[1]</sup> - 26:16</p> <p><b>Melvin</b> <sup>[3]</sup> - 87:14, 87:18, 88:3</p> <p><b>memo</b> <sup>[11]</sup> - 31:16, 31:18, 32:13, 32:23, 33:5, 33:8, 33:15, 33:24, 34:8, 51:14, 62:7</p> <p><b>memorandum</b> <sup>[1]</sup> - 61:24</p> <p><b>memory</b> <sup>[2]</sup> - 86:24, 88:6</p> <p><b>met</b> <sup>[3]</sup> - 67:2, 79:21, 99:23</p> <p><b>method</b> <sup>[1]</sup> - 64:24</p> <p><b>Michael</b> <sup>[1]</sup> - 16:7</p> <p><b>middle</b> <sup>[5]</sup> - 28:11, 41:8, 69:12, 71:18, 71:22</p> <p><b>might</b> <sup>[11]</sup> - 9:10, 12:10, 26:3, 28:8, 33:21, 33:22, 42:23, 58:5, 94:8, 95:5, 100:6</p> <p><b>mind</b> <sup>[1]</sup> - 102:12</p> <p><b>mini</b> <sup>[1]</sup> - 31:23</p> <p><b>Minor</b> <sup>[9]</sup> - 24:12, 24:15, 24:20, 63:24, 64:4, 64:9, 75:23, 86:5, 88:9</p> <p><b>MINOR</b> <sup>[1]</sup> - 1:8</p> <p><b>minutes</b> <sup>[8]</sup> - 92:15, 92:17, 92:22, 93:5, 93:8, 93:12, 94:23, 98:11</p> <p><b>Miss</b> <sup>[3]</sup> - 79:5, 79:10, 80:8</p> <p><b>moment</b> <sup>[2]</sup> - 90:12, 98:7</p> <p><b>Montgomery</b> <sup>[5]</sup> - 37:21, 37:24, 83:16, 88:21, 89:16</p> <p><b>month</b> <sup>[3]</sup> - 7:16, 8:7, 28:9</p> <p><b>months</b> <sup>[3]</sup> - 7:15, 9:7, 9:15</p> <p><b>Morales</b> <sup>[2]</sup> - 42:23, 43:5</p> <p><b>morning</b> <sup>[2]</sup> - 4:13, 57:25</p> <p><b>most</b> <sup>[8]</sup> - 13:2, 16:12, 21:9, 30:3, 33:12, 44:14, 100:8, 101:18</p> <p><b>mostly</b> <sup>[1]</sup> - 11:14</p> <p><b>mouths</b> <sup>[2]</sup> - 36:12, 36:15</p> <p><b>move</b> <sup>[3]</sup> - 15:23, 42:25, 65:24</p> <p><b>moved</b> <sup>[1]</sup> - 75:2</p> <p><b>movement</b> <sup>[1]</sup> - 42:25</p> <p><b>MR</b> <sup>[28]</sup> - 4:6, 47:6, 48:9,</p>	<p>58:21, 61:23, 65:23, 66:6, 69:10, 69:14, 73:24, 76:23, 77:23, 80:17, 83:3, 89:21, 90:13, 90:18, 90:23, 97:6, 97:13, 98:6, 98:18, 98:21, 100:12, 101:5, 101:8, 102:22, 103:3</p> <p><b>MS</b> <sup>[71]</sup> - 8:14, 12:3, 18:11, 21:16, 21:19, 25:17, 26:14, 34:3, 39:5, 45:7, 46:25, 47:22, 47:25, 48:8, 48:21, 49:9, 49:21, 50:5, 50:25, 51:8, 51:12, 51:15, 51:25, 53:21, 54:23, 55:11, 57:22, 58:14, 58:17, 59:8, 61:3, 61:12, 61:21, 66:5, 68:14, 68:18, 69:8, 69:11, 69:15, 70:6, 70:20, 72:6, 72:12, 72:18, 73:23, 76:21, 77:8, 77:21, 80:16, 82:10, 82:16, 82:20, 82:25, 88:12, 88:17, 89:5, 89:8, 89:19, 90:11, 90:16, 90:22, 93:23, 94:18, 95:3, 96:8, 97:11, 98:3, 98:16, 100:15, 101:3, 102:24</p> <p><b>mug</b> <sup>[4]</sup> - 43:19, 45:17, 46:16</p> <p><b>mugshot</b> <sup>[2]</sup> - 83:13, 83:15</p> <p><b>multiple</b> <sup>[1]</sup> - 99:21</p> <p><b>murder</b> <sup>[7]</sup> - 22:23, 37:24, 42:15, 63:7, 63:15, 63:20, 82:24</p> <p><b>murdered</b> <sup>[3]</sup> - 20:15, 82:11, 82:17</p>	<p>4:12, 106:9</p> <p><b>news</b> <sup>[2]</sup> - 28:19, 29:6</p> <p><b>News</b> <sup>[1]</sup> - 28:25</p> <p><b>next</b> <sup>[9]</sup> - 13:20, 19:5, 19:8, 48:6, 50:17, 51:13, 73:10, 93:22, 94:3</p> <p><b>Niagara</b> <sup>[1]</sup> - 2:15</p> <p><b>nice</b> <sup>[1]</sup> - 58:5</p> <p><b>nickname</b> <sup>[1]</sup> - 81:16</p> <p><b>night</b> <sup>[4]</sup> - 15:16, 15:25, 19:20, 41:8</p> <p><b>nights</b> <sup>[1]</sup> - 23:18</p> <p><b>none</b> <sup>[2]</sup> - 23:7, 40:6</p> <p><b>normal</b> <sup>[2]</sup> - 31:3, 95:19</p> <p><b>North</b> <sup>[2]</sup> - 13:13, 40:17</p> <p><b>nose</b> <sup>[1]</sup> - 36:12</p> <p><b>noses</b> <sup>[1]</sup> - 36:14</p> <p><b>Notary</b> <sup>[2]</sup> - 1:20, 106:8</p> <p><b>notation</b> <sup>[1]</sup> - 70:16</p> <p><b>note</b> <sup>[2]</sup> - 64:23, 66:19</p> <p><b>notebook</b> <sup>[1]</sup> - 32:6</p> <p><b>notebooks</b> <sup>[1]</sup> - 32:4</p> <p><b>noted</b> <sup>[1]</sup> - 103:5</p> <p><b>notes</b> <sup>[11]</sup> - 30:17, 30:18, 30:20, 31:2, 32:3, 32:7, 46:23, 62:18, 66:23, 68:11, 70:4</p> <p><b>nothing</b> <sup>[3]</sup> - 6:15, 20:21, 25:10</p> <p><b>notice</b> <sup>[2]</sup> - 1:19, 62:10</p> <p><b>number</b> <sup>[13]</sup> - 21:11, 21:14, 22:3, 33:16, 50:9, 61:22, 62:24, 63:6, 63:16, 77:19, 96:6, 96:11, 96:12</p> <p><b>Number</b> <sup>[2]</sup> - 47:19, 63:19</p> <p><b>numbers</b> <sup>[3]</sup> - 22:4, 38:12, 38:17</p> <p><b>NY</b> <sup>[2]</sup> - 2:8, 2:17</p> <p><b>NYPD</b> <sup>[1]</sup> - 14:17</p>
		<p><b>N</b></p>	<p><b>O</b></p>
		<p><b>name</b> <sup>[18]</sup> - 4:7, 14:23, 20:15, 24:12, 29:2, 31:7, 31:9, 37:7, 37:10, 37:20, 38:4, 39:22, 40:7, 62:11, 63:4, 84:4, 96:8</p> <p><b>named</b> <sup>[6]</sup> - 26:7, 37:5, 42:15, 65:5, 71:24, 79:2</p> <p><b>narcotics</b> <sup>[10]</sup> - 10:14, 10:16, 10:19, 10:23, 11:7, 12:18, 12:22, 13:5, 37:9, 72:4</p> <p><b>national</b> <sup>[1]</sup> - 39:15</p> <p><b>natural</b> <sup>[1]</sup> - 58:6</p> <p><b>need</b> <sup>[3]</sup> - 6:4, 44:4, 58:6</p> <p><b>needed</b> <sup>[5]</sup> - 16:19, 41:21, 42:2, 43:18</p> <p><b>needs</b> <sup>[1]</sup> - 95:23</p> <p><b>neighborhood</b> <sup>[1]</sup> - 13:11</p> <p><b>never</b> <sup>[8]</sup> - 20:8, 30:4, 35:3, 36:9, 36:17, 46:10, 46:19</p> <p><b>NEW</b> <sup>[3]</sup> - 1:2, 106:3, 106:5</p> <p><b>new</b> <sup>[4]</sup> - 10:20, 29:19, 59:4, 59:18</p> <p><b>New</b> <sup>[5]</sup> - 1:21, 2:8, 2:17,</p>	<p><b>oath</b> <sup>[2]</sup> - 3:12, 99:14</p> <p><b>objections</b> <sup>[1]</sup> - 3:6</p> <p><b>occasions</b> <sup>[1]</sup> - 16:17</p> <p><b>occur</b> <sup>[1]</sup> - 99:24</p> <p><b>OF</b> <sup>[5]</sup> - 1:2, 1:7, 2:12, 106:3, 106:5</p> <p><b>off-the-record</b> <sup>[1]</sup> - 90:14</p> <p><b>Office</b> <sup>[4]</sup> - 85:9, 87:15, 91:7, 91:11</p> <p><b>office</b> <sup>[9]</sup> - 6:12, 17:4, 17:5, 19:9, 19:16, 23:11, 88:14, 100:2, 100:9</p> <p><b>OFFICE</b> <sup>[1]</sup> - 2:13</p> <p><b>officer</b> <sup>[8]</sup> - 3:11, 5:3, 9:21, 9:23, 10:4, 10:21, 75:4, 86:19</p> <p><b>officers</b> <sup>[4]</sup> - 16:14, 18:17, 41:4, 86:13</p>

<b>offices</b> [4] - 16:23, 17:2, 17:9, 19:2 <b>official</b> [1] - 42:9 <b>OJT</b> [1] - 11:14 <b>old</b> [2] - 40:19, 43:19 <b>on-the-job</b> [6] - 11:13, 11:15, 11:16, 11:19, 11:23, 12:6 <b>once</b> [6] - 19:14, 26:3, 26:19, 27:15, 77:11, 100:5 <b>one</b> [43] - 13:16, 15:21, 16:24, 18:22, 19:10, 19:12, 19:14, 20:7, 20:9, 23:25, 24:23, 31:14, 32:6, 36:10, 36:17, 38:15, 39:24, 42:25, 46:24, 47:21, 48:6, 50:17, 51:13, 51:20, 54:3, 54:13, 55:21, 57:16, 62:14, 66:10, 68:24, 68:25, 69:14, 77:6, 77:20, 78:13, 86:9, 88:16, 89:2, 98:9, 98:16, 100:13, 101:5 <b>one's</b> [2] - 22:10, 68:5 <b>ones</b> [4] - 28:24, 31:23, 33:14, 89:15 <b>open</b> [5] - 17:7, 18:25, 40:23, 41:2, 41:7 <b>opportunity</b> [2] - 95:12, 97:15 <b>opposite</b> [2] - 23:10, 23:13 <b>oral</b> [1] - 70:10 <b>order</b> [2] - 29:19, 29:20 <b>otherwise</b> [1] - 58:12 <b>outcome</b> [1] - 106:18 <b>outing</b> [1] - 24:23 <b>outside</b> [3] - 14:10, 18:18, 26:22 <b>own</b> [5] - 17:9, 17:23, 58:2, 63:15, 66:23	<b>pages</b> [10] - 32:13, 32:16, 32:21, 33:2, 33:5, 33:22, 33:23, 51:6, 51:9, 51:10 <b>PANOUSIERIS</b> [1] - 2:22 <b>paper</b> [1] - 45:14 <b>papers</b> [1] - 28:22 <b>paperwork</b> [2] - 21:8, 21:10 <b>paragraph</b> [2] - 69:13, 88:20 <b>parking</b> [3] - 57:6, 57:10, 57:11 <b>part</b> [8] - 12:17, 14:15, 15:4, 16:12, 64:4, 89:21, 94:13, 100:8 <b>participate</b> [1] - 58:24 <b>particular</b> [14] - 9:18, 10:15, 13:11, 14:16, 15:15, 15:22, 16:17, 17:11, 17:24, 32:4, 35:6, 36:19, 41:12, 45:24 <b>particularly</b> [2] - 84:6, 94:16 <b>parties</b> [2] - 3:6, 106:16 <b>patrol</b> [3] - 9:21, 9:22, 10:4 <b>pattern</b> [1] - 89:22 <b>Paul</b> [16] - 21:21, 42:15, 42:21, 63:4, 63:9, 63:19, 79:6, 81:9, 81:20, 81:24, 82:2, 82:6, 82:24, 83:2, 83:4, 85:19 <b>PDF</b> [2] - 103:2, 103:4 <b>people</b> [8] - 8:11, 14:21, 15:4, 17:19, 17:20, 42:25, 44:6, 59:13 <b>per</b> [1] - 69:11 <b>percent</b> [1] - 39:18 <b>percentage</b> [1] - 39:8 <b>performed</b> [1] - 70:17 <b>period</b> [6] - 7:24, 8:8, 9:18, 10:3, 16:15, 17:25 <b>Perkins</b> [4] - 40:11, 40:13, 40:18, 40:23 <b>person</b> [15] - 7:19, 8:2, 19:14, 24:9, 42:6, 43:22, 60:3, 60:14, 82:22, 83:6, 83:19, 86:15, 86:16, 95:20 <b>personal</b> [3] - 25:10, 35:4, 102:2 <b>personally</b> [1] - 10:5 <b>phone</b> [3] - 33:16, 64:13, 64:18 <b>photo</b> [14] - 43:8, 44:17, 44:23, 45:5, 46:2, 46:8, 46:12, 60:20, 60:22, 60:24, 61:9, 61:10, 88:21, 90:3 <b>photograph</b> [5] - 43:21, 54:12, 83:9, 89:3, 89:16 <b>photographic</b> [3] - 8:9, 10:7, 11:21 <b>photographs</b> [1] - 8:10 <b>photos</b> [2] - 43:12, 60:22	<b>phrase</b> [1] - 45:24 <b>physically</b> [2] - 100:21, 100:22 <b>picked</b> [1] - 44:9 <b>picture</b> [2] - 45:19, 46:4 <b>pictures</b> [3] - 44:15, 45:15, 46:7 <b>place</b> [9] - 8:10, 18:7, 30:13, 34:19, 35:4, 40:10, 41:3, 41:8, 45:21 <b>placed</b> [1] - 61:8 <b>Plaintiff</b> [1] - 1:5 <b>plaintiff</b> [2] - 1:18, 2:5 <b>plan</b> [2] - 17:7, 18:25 <b>PLLC</b> [1] - 2:4 <b>point</b> [3] - 15:11, 16:24, 17:15 <b>Police</b> [12] - 4:16, 6:22, 7:5, 7:11, 9:19, 14:10, 15:3, 34:18, 35:18, 43:13, 57:8, 59:20 <b>police</b> [4] - 5:2, 10:21, 41:3, 75:4 <b>pop</b> [1] - 8:23 <b>Pope</b> [21] - 21:22, 42:15, 42:21, 63:4, 63:7, 63:10, 63:19, 65:9, 71:20, 71:23, 72:22, 79:6, 81:9, 81:20, 81:24, 82:3, 82:6, 82:24, 83:2, 83:4, 96:23 <b>Pope's</b> [1] - 85:19 <b>popular</b> [1] - 41:3 <b>position</b> [3] - 9:18, 10:11, 13:21 <b>positions</b> [3] - 6:25, 7:8, 59:11 <b>possible</b> [5] - 76:17, 77:6, 77:13, 93:3, 94:20 <b>Post</b> [1] - 78:2 <b>Post-it</b> [1] - 78:2 <b>potential</b> [1] - 18:9 <b>potentially</b> [2] - 72:5, 99:20 <b>pounds</b> [1] - 79:15 <b>practice</b> [4] - 70:18, 83:8, 89:22, 91:15 <b>precinct</b> [11] - 12:24, 12:25, 13:3, 13:8, 13:10, 13:14, 13:20, 34:2, 40:19, 40:20, 46:12 <b>prefer</b> [1] - 102:25 <b>prep</b> [1] - 5:17 <b>prepares</b> [1] - 101:22 <b>preparing</b> [1] - 57:12 <b>presence</b> [1] - 26:22 <b>PRESENT</b> [1] - 2:21 <b>present</b> [1] - 8:20 <b>pretty</b> [1] - 57:4 <b>printout</b> [1] - 54:17 <b>problem</b> [2] - 35:21, 58:10 <b>problems</b> [1] - 35:8 <b>procedure</b> [9] - 30:19, 31:3,	33:18, 41:12, 60:8, 61:2, 68:10, 93:17, 95:19 <b>proceedings</b> [2] - 99:4, 99:8 <b>process</b> [1] - 45:4 <b>produce</b> [1] - 43:19 <b>prosecution</b> [3] - 9:10, 11:25, 12:2 <b>provide</b> [1] - 30:15 <b>provided</b> [10] - 57:18, 64:16, 70:14, 77:2, 80:2, 80:9, 87:22, 91:20, 93:4, 94:7 <b>provides</b> [1] - 79:10 <b>Public</b> [2] - 1:21, 106:8 <b>pull</b> [2] - 18:15, 96:2 <b>Pumpkin</b> [1] - 81:16 <b>purpose</b> [1] - 60:5 <b>purposes</b> [1] - 35:4 <b>pursuant</b> [1] - 1:18 <b>push</b> [1] - 58:9 <b>put</b> [19] - 29:19, 29:20, 29:24, 30:4, 30:11, 33:3, 33:10, 33:13, 43:7, 44:17, 45:15, 45:20, 57:20, 59:21, 60:22, 61:10, 64:23, 66:16, 95:10
<b>P</b>			
<b>P-73</b> [11] - 62:9, 66:9, 66:25, 68:4, 69:19, 70:2, 77:16, 84:16, 85:3, 86:12, 87:10 <b>P-73s</b> [4] - 62:8, 66:14, 100:24, 101:22 <b>p.m</b> [3] - 76:14, 80:4, 103:5 <b>P93</b> [2] - 84:19, 84:23 <b>pad</b> [1] - 33:17 <b>pads</b> [1] - 31:22 <b>PAGE</b> [3] - 107:5, 107:8, 108:5 <b>Page</b> [3] - 50:7, 50:9, 86:8 <b>page</b> [13] - 46:21, 47:22, 47:23, 49:6, 50:6, 50:10, 51:14, 54:17, 70:22, 73:10, 77:21, 78:24, 92:10 <b>PAGE/LINE</b> [1] - 104:5			
			<b>Q</b>
			<b>quarter</b> [1] - 38:23 <b>questions</b> [11] - 5:20, 78:9, 78:25, 81:4, 92:18, 93:18, 94:9, 98:13, 100:7, 100:10, 102:23 <b>quick</b> [1] - 58:15 <b>quiz</b> [1] - 8:23
			<b>R</b>
			<b>rambling</b> [1] - 5:20 <b>ran</b> [2] - 23:25, 24:23 <b>range</b> [1] - 38:19 <b>Raniero</b> [1] - 26:25 <b>RANIERO</b> [1] - 1:10 <b>rank</b> [1] - 27:21 <b>rarely</b> [1] - 33:11 <b>rate</b> [2] - 39:7, 39:11 <b>rates</b> [1] - 39:2 <b>read</b> [2] - 28:21, 95:22 <b>reading</b> [4] - 22:21, 39:24, 42:16, 43:3 <b>really</b> [3] - 7:20, 26:13, 37:3 <b>reason</b> [6] - 68:8, 68:15, 88:8, 88:15, 88:25, 89:10 <b>receive</b> [4] - 7:17, 8:8, 11:12, 92:18 <b>received</b> [1] - 67:8 <b>recently</b> [1] - 34:15 <b>recess</b> [2] - 58:19, 98:19

<p><b>recognize</b> [30] - 29:2, 37:20, 39:22, 40:7, 46:6, 46:18, 47:7, 48:3, 48:14, 49:3, 49:17, 50:2, 50:7, 50:14, 51:4, 51:9, 51:21, 52:7, 52:16, 52:23, 53:7, 53:17, 54:4, 54:13, 55:3, 55:13, 55:22, 56:5, 56:14, 56:22</p> <p><b>recollection</b> [10] - 22:22, 23:5, 38:3, 40:5, 42:18, 68:20, 71:15, 85:19, 96:15, 100:24</p> <p><b>record</b> [19] - 4:7, 20:5, 58:21, 62:5, 64:20, 66:8, 68:3, 69:18, 71:4, 84:15, 87:9, 90:12, 90:14, 90:17, 97:18, 98:10, 98:22, 99:13, 106:13</p> <p><b>record's</b> [1] - 34:7</p> <p><b>recorder</b> [2] - 20:2, 20:4</p> <p><b>redacted</b> [1] - 69:12</p> <p><b>redid</b> [1] - 59:5</p> <p><b>reference</b> [3] - 84:19, 85:15, 86:12</p> <p><b>referring</b> [1] - 21:7</p> <p><b>refers</b> [3] - 73:7, 85:2, 85:10</p> <p><b>reflected</b> [1] - 93:5</p> <p><b>refresh</b> [2] - 85:18, 96:15</p> <p><b>refreshed</b> [1] - 22:22</p> <p><b>regard</b> [2] - 7:25, 9:14</p> <p><b>regarded</b> [1] - 32:21</p> <p><b>regarding</b> [5] - 7:18, 8:21, 32:18, 32:19, 79:2</p> <p><b>Reginald</b> [1] - 24:12</p> <p><b>REGINALD</b> [1] - 1:8</p> <p><b>registered</b> [1] - 84:5</p> <p><b>related</b> [2] - 25:11, 106:16</p> <p><b>relating</b> [1] - 32:7</p> <p><b>relatively</b> [1] - 39:16</p> <p><b>released</b> [1] - 29:6</p> <p><b>relevant</b> [3] - 72:4, 94:16, 95:9</p> <p><b>remain</b> [1] - 33:5</p> <p><b>remember</b> [36] - 5:16, 14:13, 14:15, 14:23, 15:7, 21:5, 24:5, 36:21, 37:6, 38:12, 39:18, 39:20, 40:10, 40:25, 42:14, 42:20, 45:10, 46:19, 60:18, 65:17, 67:5, 67:13, 67:16, 67:18, 70:7, 87:18, 88:18, 89:23, 91:9, 96:11, 96:17, 96:19, 96:25, 97:3, 100:18, 102:5</p> <p><b>reminded</b> [1] - 21:17</p> <p><b>remotely</b> [1] - 1:19</p> <p><b>repeat</b> [1] - 61:21</p> <p><b>Report</b> [1] - 96:14</p> <p><b>report</b> [22] - 29:18, 29:24, 29:25, 30:16, 30:21, 30:22,</p>	<p>30:23, 31:2, 31:3, 31:5, 31:8, 31:13, 32:9, 32:10, 32:17, 32:18, 32:21, 33:3, 33:14, 43:3, 64:23, 67:20</p> <p><b>reported</b> [1] - 1:19</p> <p><b>reporter</b> [2] - 6:7, 58:8</p> <p><b>Reporter</b> [36] - 1:20, 22:17, 47:5, 47:17, 48:13, 49:2, 49:14, 49:25, 50:13, 50:24, 51:19, 52:6, 52:15, 52:22, 53:6, 53:14, 54:2, 54:11, 54:22, 55:10, 55:20, 56:4, 56:13, 56:21, 61:20, 66:4, 67:25, 69:7, 71:2, 78:6, 80:22, 84:12, 86:2, 87:7, 97:10, 106:8</p> <p><b>reports</b> [3] - 29:19, 39:25, 42:17</p> <p><b>represent</b> [1] - 88:2</p> <p><b>reputation</b> [2] - 35:6, 37:17</p> <p><b>reserved</b> [1] - 3:7</p> <p><b>respect</b> [10] - 5:2, 8:16, 11:17, 11:20, 12:7, 22:5, 83:3, 91:11, 96:22, 97:4</p> <p><b>respective</b> [1] - 3:5</p> <p><b>response</b> [4] - 93:25, 94:2, 94:3, 94:5</p> <p><b>responses</b> [1] - 6:4</p> <p><b>Restaurant</b> [4] - 40:11, 40:14, 40:19, 40:23</p> <p><b>restaurant</b> [1] - 40:15</p> <p><b>result</b> [2] - 37:25, 72:10</p> <p><b>results</b> [1] - 36:24</p> <p><b>retire</b> [1] - 7:4</p> <p><b>retired</b> [3] - 4:15, 34:5, 34:9</p> <p><b>review</b> [3] - 97:15, 97:21, 102:16</p> <p><b>reviewed</b> [3] - 23:4, 42:13, 58:3</p> <p><b>Rickner</b> [2] - 107:6, 107:7</p> <p><b>RICKNER</b> [48] - 2:4, 2:9, 4:6, 21:18, 22:8, 25:19, 47:2, 47:6, 47:11, 47:23, 48:9, 48:22, 49:10, 49:22, 50:20, 51:3, 51:16, 52:2, 53:22, 54:24, 55:12, 58:16, 58:18, 58:21, 61:23, 65:23, 66:6, 69:10, 69:14, 73:24, 76:23, 77:23, 80:17, 83:3, 89:21, 90:13, 90:18, 90:23, 97:6, 97:13, 98:6, 98:18, 98:21, 100:12, 101:5, 101:8, 102:22, 103:3</p> <p><b>Riga</b> [4] - 15:12, 27:18, 27:19, 48:20</p> <p><b>RIGA</b> [1] - 1:11</p> <p><b>right-hand</b> [3] - 21:12, 21:14, 22:4</p> <p><b>rights</b> [1] - 5:6</p> <p><b>Rob</b> [1] - 48:8</p> <p><b>ROB</b> [1] - 2:9</p>	<p><b>ROBERT</b> [1] - 1:10</p> <p><b>Robert</b> [1] - 26:8</p> <p><b>rock</b> [3] - 72:23, 72:25, 73:7</p> <p><b>Ronald</b> [2] - 65:5, 71:5</p> <p><b>Room</b> [1] - 2:16</p> <p><b>room</b> [5] - 16:25, 19:3, 19:11, 19:15, 19:22</p> <p><b>rotated</b> [2] - 15:18, 15:24</p> <p><b>roughly</b> [1] - 38:6</p> <p><b>rubber</b> [2] - 33:19, 33:25</p> <p><b>rules</b> [2] - 5:18, 6:13</p> <p><b>run</b> [1] - 32:13</p> <p><b>Russell</b> [11] - 37:20, 37:23, 71:24, 79:2, 79:6, 79:11, 81:20, 82:22, 83:16, 88:21, 89:16</p>	<p><b>shapes</b> [1] - 36:16</p> <p><b>sheet</b> [2] - 8:11, 56:9</p> <p><b>shift</b> [5] - 15:16, 15:25, 41:15, 41:17</p> <p><b>shifts</b> [1] - 15:15</p> <p><b>shootings</b> [2] - 35:10, 35:12</p> <p><b>short</b> [2] - 58:19, 98:19</p> <p><b>Shorthand</b> [2] - 1:20, 106:7</p> <p><b>shortly</b> [1] - 59:5</p> <p><b>shot</b> [1] - 45:17</p> <p><b>shots</b> [3] - 43:19, 43:20, 46:16</p> <p><b>show</b> [6] - 8:11, 9:11, 43:21, 45:18, 45:22, 89:2</p> <p><b>showed</b> [6] - 7:22, 18:4, 44:25, 45:19, 60:23, 60:25</p> <p><b>showing</b> [4] - 45:5, 46:2, 89:15, 100:17</p> <p><b>shown</b> [4] - 88:22, 90:2, 90:3, 100:16</p> <p><b>shows</b> [1] - 21:21</p> <p><b>shredded</b> [1] - 34:13</p> <p><b>shuffle</b> [2] - 59:22, 60:13</p> <p><b>sign</b> [5] - 30:6, 30:24, 31:4, 86:13, 102:16</p> <p><b>signatories</b> [1] - 86:9</p> <p><b>signed</b> [12] - 3:10, 22:19, 62:7, 62:14, 66:10, 66:18, 68:5, 69:8, 86:16, 90:21, 91:21, 95:13</p> <p><b>significant</b> [1] - 72:16</p> <p><b>signs</b> [1] - 95:17</p> <p><b>similar</b> [1] - 8:11</p> <p><b>single</b> [5] - 46:21, 49:6, 50:9, 51:14, 54:17</p> <p><b>single-page</b> [1] - 49:6</p> <p><b>SIOLIDIS</b> [1] - 106:22</p> <p><b>Siolidis</b> [2] - 1:20, 106:7</p> <p><b>sit</b> [3] - 23:3, 60:17, 102:10</p> <p><b>sitting</b> [1] - 64:15</p> <p><b>six</b> [8] - 7:15, 7:16, 8:7, 9:7, 9:15, 45:14, 45:15, 59:13</p> <p><b>six-month</b> [2] - 7:16, 8:7</p> <p><b>skinned</b> [1] - 79:14</p> <p><b>slots</b> [1] - 45:14</p> <p><b>small</b> [2] - 31:21, 31:23</p> <p><b>smoothly</b> [1] - 5:19</p> <p><b>sold</b> [1] - 71:25</p> <p><b>someone</b> [1] - 20:15</p> <p><b>sometimes</b> [6] - 16:17, 18:20, 72:10, 86:12, 86:18, 86:21</p> <p><b>somewhere</b> [1] - 19:6</p> <p><b>sorry</b> [2] - 82:4, 92:3</p> <p><b>sort</b> [6] - 7:12, 35:19, 44:20, 56:9, 64:20, 77:19</p> <p><b>sounded</b> [1] - 29:4</p> <p><b>specializing</b> [1] - 40:16</p> <p><b>specialty</b> [1] - 13:5</p> <p><b>specific</b> [3] - 11:12, 42:6,</p>
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<p>102:5  <b>specifically</b> [4] - 7:25,  74:17, 100:19, 100:25  <b>spelled</b> [1] - 24:8  <b>spoken</b> [3] - 24:21, 26:17,  65:14  <b>spot</b> [2] - 32:6, 58:6  <b>squad</b> [23] - 10:14, 10:16,  10:19, 10:23, 11:7, 12:18,  12:23, 13:4, 13:5, 13:23,  13:25, 15:5, 16:24, 17:6,  19:6, 19:18, 19:23, 20:8,  31:12, 39:12, 58:23, 65:2,  100:4  <b>squads</b> [2] - 13:6, 38:22  <b>Square</b> [1] - 2:15  <b>ss</b> [1] - 106:4  <b>stack</b> [3] - 33:20, 33:24,  44:15  <b>Stambach</b> [23] - 16:6,  16:11, 25:3, 25:6, 25:15,  66:11, 66:13, 66:18, 68:6,  68:9, 69:9, 69:24, 70:3, 78:9,  78:13, 79:5, 81:4, 88:11,  89:15, 100:19, 101:10,  101:21, 102:3  <b>STAMBACH</b> [1] - 1:8  <b>Stambach's</b> [2] - 62:11,  84:19  <b>stamp</b> [3] - 46:22, 47:13,  69:2  <b>stamped</b> [1] - 68:24  <b>stand</b> [3] - 59:18, 85:8, 99:9  <b>stand-ins</b> [1] - 59:18  <b>standard</b> [1] - 57:7  <b>standing</b> [1] - 59:13  <b>staple</b> [2] - 30:25, 32:9  <b>started</b> [12] - 7:10, 16:5,  16:8, 41:10, 45:12, 76:13,  80:4, 80:25, 92:8, 92:20,  92:25, 94:12  <b>STATE</b> [1] - 106:3  <b>State</b> [2] - 1:21, 106:9  <b>state</b> [1] - 4:7  <b>statement</b> [36] - 20:22,  20:23, 21:17, 67:9, 67:14,  70:11, 70:13, 71:5, 71:8,  71:12, 71:18, 76:12, 76:18,  77:2, 77:7, 77:16, 78:8,  79:23, 80:3, 80:4, 80:9,  80:10, 80:18, 80:24, 81:19,  87:23, 88:4, 88:15, 92:7,  92:11, 94:12, 94:13, 94:17,  95:10, 95:18, 95:21  <b>statement's</b> [1] - 95:20  <b>statements</b> [2] - 12:9,  12:10  <b>states</b> [8] - 67:12, 71:19,  72:22, 76:25, 80:8, 81:9,  84:18, 87:14  <b>STATES</b> [1] - 1:2</p>	<p><b>stay</b> [1] - 33:17  <b>step</b> [1] - 93:15  <b>STEPHANIE</b> [1] - 2:22  <b>stepped</b> [1] - 44:9  <b>Steven</b> [2] - 90:5, 90:8  <b>still</b> [6] - 9:3, 10:21, 28:16,  33:25, 34:11, 82:8  <b>STIPULATED</b> [3] - 3:4, 3:9,  3:13  <b>STIPULATIONS</b> [1] - 3:2  <b>stopped</b> [2] - 13:19, 92:11  <b>store</b> [1] - 23:25  <b>stored</b> [1] - 43:15  <b>strange</b> [1] - 89:7  <b>Street</b> [2] - 2:6, 34:23  <b>street</b> [2] - 73:13, 74:5  <b>stretch</b> [2] - 58:13, 58:15  <b>stuff</b> [2] - 13:7, 25:10  <b>subject</b> [1] - 63:9  <b>submitted</b> [1] - 70:4  <b>submitting</b> [1] - 68:11  <b>Subscribed</b> [1] - 105:13  <b>Suite</b> [1] - 2:7  <b>summer</b> [1] - 28:2  <b>summons</b> [1] - 57:5  <b>suppose</b> [1] - 27:18  <b>supposed</b> [1] - 29:21  <b>surveillance</b> [1] - 35:20  <b>suspect</b> [3] - 61:4, 61:5,  61:10  <b>suspects</b> [2] - 18:4, 18:9  <b>sworn</b> [14] - 3:10, 4:4, 67:9,  67:13, 70:11, 77:16, 79:23,  80:2, 80:9, 80:10, 87:23,  88:4, 105:13, 106:12</p>	<p><b>thereabouts</b> [1] - 11:4  <b>third</b> [2] - 24:9, 88:20  <b>thirds</b> [1] - 81:19  <b>thousand</b> [1] - 72:23  <b>three</b> [16] - 15:18, 15:19,  16:4, 16:10, 16:22, 18:19,  23:15, 24:6, 31:25, 33:22,  59:12, 59:17, 64:5, 64:10,  101:14, 101:16  <b>ticket</b> [3] - 57:6, 57:10,  57:11  <b>tip</b> [4] - 64:13, 64:16, 64:19,  64:21  <b>tips</b> [1] - 64:25  <b>title</b> [3] - 10:15, 10:20,  27:21  <b>today</b> [8] - 23:3, 40:2,  60:17, 64:15, 91:23, 98:2,  102:8, 102:10  <b>together</b> [5] - 43:8, 46:16,  59:21, 76:17, 79:7  <b>Tomika</b> [3] - 20:15, 22:23,  23:5  <b>took</b> [5] - 20:22, 20:23,  34:5, 34:8, 76:3  <b>top</b> [12] - 48:19, 48:20,  49:8, 50:18, 52:11, 62:23,  71:7, 75:20, 78:7, 78:25,  81:15, 86:3  <b>torn</b> [2] - 33:2, 56:9  <b>track</b> [1] - 39:2  <b>tracking</b> [1] - 64:25  <b>trade</b> [1] - 71:20  <b>trained</b> [1] - 9:14  <b>training</b> [14] - 7:12, 7:16,  7:23, 8:8, 9:7, 9:17, 11:8,  11:13, 11:15, 11:17, 11:20,  11:24, 12:6, 14:2  <b>transactions</b> [1] - 72:10  <b>transcript</b> [6] - 6:8, 94:21,  97:8, 97:11, 102:15, 108:23  <b>transferred</b> [1] - 13:22  <b>trial</b> [5] - 3:8, 18:21, 98:25,  99:16, 102:20  <b>trick</b> [1] - 82:14  <b>true</b> [1] - 106:13  <b>trunk</b> [3] - 85:11, 85:16,  85:20  <b>truth</b> [3] - 6:15, 6:16  <b>try</b> [3] - 60:9, 60:15, 61:11  <b>trying</b> [1] - 21:9  <b>turn</b> [4] - 9:8, 12:8, 12:15,  54:16  <b>turning</b> [1] - 11:24  <b>twice</b> [1] - 26:3  <b>two</b> [17] - 11:3, 19:2, 20:23,  21:24, 26:12, 33:21, 39:25,  47:22, 47:23, 49:7, 59:12,  59:16, 70:22, 77:21, 81:19,  95:6  <b>two-page</b> [4] - 47:22,</p>	<p>47:23, 70:22, 77:21  <b>two-thirds</b> [1] - 81:19  <b>type</b> [17] - 30:6, 30:23,  31:20, 57:5, 62:20, 66:14,  71:11, 91:2, 93:18, 93:20,  93:21, 93:23, 93:24, 94:2,  94:4, 96:4  <b>typed</b> [9] - 62:17, 68:11,  70:4, 71:8, 81:3, 91:16, 93:8,  93:13, 95:20  <b>types</b> [3] - 36:13, 36:14,  36:15  <b>typewriter</b> [2] - 17:14,  19:24  <b>typewriters</b> [3] - 17:12,  17:19, 19:21  <b>typically</b> [1] - 73:8  <b>typing</b> [5] - 66:16, 78:13,  92:20, 92:21, 92:25  <b>typo</b> [2] - 84:25, 89:10</p>
<b>U</b>			
<p><b>ultimately</b> [2] - 5:24, 86:13  <b>uncovered</b> [1] - 12:2  <b>under</b> [1] - 99:14  <b>underneath</b> [1] - 63:3  <b>understand</b> [6] - 9:4, 20:14,  21:20, 99:11, 102:14, 102:18  <b>unfortunately</b> [1] - 77:18  <b>UNITED</b> [1] - 1:2  <b>unless</b> [1] - 98:13  <b>up</b> [28] - 15:15, 17:23, 22:9,  29:21, 30:14, 37:11, 38:4,  43:16, 45:16, 45:18, 58:7,  59:13, 59:15, 62:17, 62:20,  66:14, 68:12, 70:4, 74:20,  78:14, 91:2, 91:16, 93:13,  93:19, 96:2, 98:12, 98:17,  101:5  <b>usual</b> [1] - 68:10</p>			
<b>V</b>			
<p><b>vaguely</b> [1] - 37:6  <b>varied</b> [2] - 38:11, 38:13  <b>vehicle</b> [1] - 85:20  <b>verbal</b> [1] - 6:4  <b>via</b> [1] - 103:2  <b>victim</b> [3] - 63:10, 72:14,  79:6  <b>victim's</b> [4] - 63:13, 65:8,  65:15, 65:17  <b>video</b> [1] - 20:10  <b>Videoconference</b> [1] - 1:17  <b>videotape</b> [1] - 20:12  <b>view</b> [1] - 45:23  <b>Vikki</b> [5] - 69:3, 69:21, 70:8,  79:22, 80:2</p>			

<b>W</b>
<p> <b>wait</b> [3] - 5:24, 21:22, 94:5  <b>waived</b> [1] - 3:15  <b>walked</b> [1] - 7:21  <b>Wall</b> [1] - 2:6  <b>watch</b> [1] - 28:18  <b>ways</b> [1] - 103:4  <b>weeks</b> [1] - 15:24  <b>WESTERN</b> [1] - 1:2  <b>what'd</b> [1] - 75:16  <b>whatsoever</b> [2] - 23:7, 40:6  <b>whole</b> [3] - 6:15, 59:17, 101:11  <b>Willow</b> [1] - 4:11  <b>witness</b> [27] - 4:3, 8:12, 45:22, 45:25, 46:17, 58:7, 59:4, 59:6, 59:23, 59:24, 60:2, 60:24, 60:25, 61:11, 77:11, 77:15, 79:22, 81:8, 89:2, 89:17, 90:4, 92:24, 94:7, 99:19, 106:10, 106:14  <b>WITNESS</b> [1] - 107:5  <b>witnesses</b> [1] - 68:21  <b>wondering</b> [1] - 76:24  <b>word</b> [3] - 94:25, 95:4, 95:5  <b>worth</b> [1] - 72:23  <b>wrapping</b> [1] - 98:12  <b>write</b> [2] - 30:21, 33:16  <b>wrote</b> [1] - 32:9  <b>Wymiko</b> [12] - 39:22, 40:5, 67:2, 67:5, 80:17, 81:9, 81:15, 87:16, 87:19, 88:22, 94:23, 95:11 </p>
<b>Y</b>
<p> <b>year</b> [7] - 11:3, 13:16, 25:8, 26:20, 38:14, 38:15, 38:24  <b>years</b> [19] - 9:2, 9:24, 12:19, 23:23, 23:24, 24:4, 24:24, 26:3, 26:18, 27:9, 27:16, 38:10, 38:16, 38:18, 38:20, 45:11, 101:9, 101:11, 101:17  <b>yellow</b> [2] - 31:22, 56:9  <b>YORK</b> [3] - 1:2, 106:3, 106:5  <b>York</b> [5] - 1:21, 2:8, 2:17, 4:12, 106:9  <b>yourself</b> [4] - 44:10, 62:21, 86:5, 94:22  <b>yup</b> [6] - 49:22, 55:2, 69:10, 72:2, 73:12, 81:14 </p>
<b>Z</b>
<p> <b>zeros</b> [1] - 47:14  <b>Zoom</b> [1] - 6:12 </p>